



Workers' stories of exploitation & abuse

WHY BC EMPLOYMENT STANDARDS NEED TO CHANGE



BC Employment
Standards Coalition
JuLY 2017

BCESC 

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BC EMPLOYMENT STANDARDS COALITION
JUNE 2017

This is the final report of an investigative project conducted by the BC Employment Standards Coalition that documents and analyzes the failure of provincial labour laws and the system of enforcement to ensure fairness and decency in BC's workplaces. The research for this report was conducted in the fall of 2016, and the findings and recommendations are based on 145 workers' stories collected by the coalition, supplemented with stories from previously published research reports and case files from workers' organizations. The coalition urges the BC government to adopt the recommendations contained in this report in order to improve the lives of British Columbians.

The BC Employment Standards Coalition brings together organizations, advocates and workers in a campaign for employment standards legislation that provides decent wages and working conditions, and respect and dignity for all workers in the province of British Columbia.

An interim summary report of this report was published by the coalition in May 2017.

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Introduction

IT HAS BEEN 24 YEARS SINCE WORKERS in British Columbia were given the opportunity to express their views of employment standards, workplace rights and whether employment law, in practice, ensures fairness and access to justice.

During the 1993 Review of Employment Standards in British Columbia by the government appointed independent commissioner, Professor Mark Thompson, 15 public hearings were held around the province and over 600 people and organizations spoke to or contacted the Commission to express their views. The February 1994 Commissioner's report recommended progressive changes to the Employment Standards Act (ESA) that were largely beneficial to workers because they raised many of the minimum standards of employment.

A decade later, however, and following the election of a Liberal government in 2001, three government bills (Bills 48, 37 & 56) made approximately 42 changes to the ESA without the benefit of an independent public review. The government also instituted 40 changes to the Employment Standards Regulation ("Regulation"), and significantly reduced the budget and staff resources of the Employment Standards Branch (ESB), the government agency charged with enforcing the ESA. These measures responded to the lobbying efforts of BC employer organizations and substantially reduced the minimum standards of employment and the enforcement of employment law for the majority of workers.¹

Changes in labour market regulation and practices over the past twenty years have realigned the distribution of risks, costs, benefits, and power between employers and employees. Employers' goal of a 'flexible' workforce has become paramount in shaping the employment relationship, a trend that is reinforced by current employment law.

British Columbia's ESA is supposed to provide all workers with the same basic minimum workplace rights and protections, including minimum wages, regulated work hours and overtime, statutory holidays and vacations with pay, leaves of absence, termination of employment rights, and more. Over 80 per cent of workers in the private sector in BC have no other employment rights than those provided in the ESA.

Over the past twenty years, jobs for a growing number of workers have become increasingly precarious, low paid, exploitative, and without basic rights. This growing precariousness of employment has been widely recognized across Canada. In BC, the inadequacies of employment standards have contributed to this trend. In 2015, the government of Ontario, in

¹ For an analysis of these changes, see David Fairey (2005), *Eroding Worker Protections: British Columbia's New 'Flexible' Employment Standards*. Vancouver: Canadian Centre for Policy Alternatives — BC Office. Accessed at: http://www.policyalternatives.ca/sites/default/files/uploads/publications/BC_Office_Pubs/bc_2005/employment_standards.pdf.

Changes in labour market regulation and practices over the past twenty years have realigned the distribution of risks, costs, benefits, and power between employers and employees.

recognition of this trend, established a commission of inquiry into the adequacy of labour and employment laws to counter the growth of precarious employment. The Ontario Changing Workplaces Review panel released a report on May 23, 2017², outlining 173 recommendations to the Ontario ESA and the Labour Relations Act.

In the spring of 2016, the Vancouver Island Public Interest Research Group and the Retail Action Network published a research report on the experiences of precariously employed workers in the retail, food service and hospitality industries in Victoria. The report highlighted the BC ESA's failure to care for the needs and interests of workers in those industries.

In recent years, numerous organizations have sent submissions to the BC provincial government, calling for improvement and expansion of the ESA and its enforcement. These organizations have included anti-poverty, child welfare, union, migrant worker, community legal services and employment law advocacy groups, and the Canadian Centre for Policy Alternatives. However, these submissions appear to have fallen on deaf ears as the BC government has stated it has no intention of changing employment standards in the foreseeable future.

EMPLOYMENT STANDARDS IN BC

BC Employment Standards Act (“ESA”): The ESA is legislation that is passed by the provincial legislature. Its stated purposes are:

- a) to ensure that employees in British Columbia receive at least basic standards of compensation and conditions of employment;
- b) to promote the fair treatment of employees and employers;
- c) to encourage open communication between employers and employees;
- d) to provide fair and efficient procedures for resolving disputes over the application and interpretation of the Act;
- e) to foster the development of a productive and efficient labour force that can contribute fully to the prosperity of British Columbia;
- f) to contribute in assisting employees to meet work and family responsibilities.

The Act is divided into 15 parts covering matters such as the hiring of employees, wages, special clothing, record-keeping, hours of work and overtime, statutory holidays, special leaves, annual vacation, termination of employment, complaints and investigations, enforcement, and the Employment Standards Tribunal.

BC Employment Standards Regulation (“Regulation”): Under Section 127 of the ESA the provincial government may establish through an order-in-council by the Lieutenant Governor in Council regulations that interpret, administer, supplement or limit provisions contained in the ESA. For example, minimum wages are specified in the Regulation and not the Act. The Regulation also includes regulations covering employment agencies, farm labour contractors, domestic workers (live-in caregivers), minimum wages, exclusions for particular types of workers, and conditions of employment for children. The Regulation can be changed by the government without approval of the legislature.

In recent years, numerous organizations have sent submissions to the BC provincial government, calling for improvement and expansion of the ESA and its enforcement.

2 Ontario Ministry of Labour (2017), *The Changing Workplaces Review — Final Report*. Toronto: Queen's Printer for Ontario. Accessed at: https://www.ontario.ca/document/changing-workplaces-review-final-report?_ga=2.46346599.1193785187.1496771040-1285037593.1492791771.

BC Employment Standards Branch (“ESB”): The ESB is the government’s department or agency responsible to administer and enforce the ESA. The ESB is headed by a “Director” who has administrative powers and responsibilities as specified in the ESA and Regulation.

THE BRITISH COLUMBIA LAW INSTITUTE REVIEW

The regulation also includes regulations covering employment agencies, farm labour contractors, domestic workers (live-in caregivers), minimum wages, exclusions for particular types of workers, and conditions of employment for children.

Two years ago, the BC Law Institute began a review of the ESA, conducted by its legal staff and an advisory committee of lawyers with employment law backgrounds. The BC Law Institute is a not-for-profit law reform agency that works to improve and modernize the law. Acknowledging that no comprehensive review of the ESA has been carried out in over 20 years, the BC Law Institute was encouraged to undertake a review of the ESA because it does not adequately address the realities of today’s workplaces and is overdue for review.

The Law Foundation of BC is a major funder of the BC Law Institute review. Although the BC government has also provided some of the project funding and is an observer on the project advisory committee, the government is not committed to implementing any of the project’s recommended changes.

Regrettably, there are fundamental shortcomings in the BC Law Institute’s review process. The project does not include a public hearing process that would enable workers to present their views and employment abuse stories that identify the need for employment standards improvements. Additionally, the public input response to the institute’s consultation paper (expected in late 2017) will be limited to written submissions.

CONTEXT

Carol is single mother with three children; she receives no child support for two of them. Carol holds three jobs: a part-time early shift ending at 10a.m. at Tim Horton’s; a full-time afternoon shift from 11:30 a.m. to 7:30 p.m. at a care facility; and a part-time Saturday and Sunday, 11:30 a.m. to 8 p.m., shift at a family restaurant.

Carol’s complaints are against Tim Horton’s, where she has worked for six years. This Tim Horton’s worksite does not pay her for all the hours that she works. Initially, her shift started at 6 a.m. Four or five years ago, her employer required her to start work earlier in order to perform all of the duties that were added to her duty list, but she does not get paid to work the first 65 minutes of her shift.

Carol’s second complaint concerns wage inequity. She says that when temporary foreign workers (TFWs) were hired at her worksite, they were earning more than Carol for doing the same work.

Workplace safety is also an issue at Carol’s worksite. The counters are too high, causing arm pain, and there is no burn protection from the panini grill, where protective pads are needed.



Carol's employment situation is all too common for low wage workers in part-time, temporary, or contract jobs without employment benefits or workplace protection. Like Carol, many workers are juggling two or three jobs just to get by and support their families.

Situations like Carol's would improve if the province's labour laws were designed to provide minimum standards for decent wages, and working conditions consistent with the International Labour Organization's fundamental principles of "decent" work. Currently, BC's ESA and Regulation, and the government's enforcement of those minimum standards, does not ensure decent work for all workers in the province.

Professor Harry Arthurs explained the principle of decent work in his 2006 federal government report, *Fairness at Work*:

Labour standards should ensure that no matter how limited his or her bargaining power, no worker ... is offered, accepts or works under conditions that Canadians would not regard as "decent". No worker should therefore receive a wage that is insufficient to live on; be deprived of the payment of wages or benefits to which they are entitled; be subject to coercion, discrimination, indignity or unwarranted danger in the workplace; or be required to work so many hours that he or she is effectively denied a personal or civic life.³

Ontario's *Changing Workplaces Review—Final Report* also adopts the principle of decent work as established by the International Labour Organization and Prof. Arthurs.⁴

In addition, the 419-page final report of the Changing Workplaces Review draws on ten commissioned research reports, examining a range of topics that include workers' rights and representation, collective bargaining, employment standards compliance and enforcement, and labour market changes leading to the growth of precarious and non-standard work. It is worth noting that Ontario's Changing Workplaces Review was given a sufficiently broad mandate to "consider the broader issues affecting the workplace and assess how the current labour and employment law framework addresses these trends and issues with a focus

The Ontario *Changing Workplaces Review*—initiated and resourced by the Ontario provincial government—stands in stark contrast to the narrow scope of the BC Law Institute review process, which does not have the mandate to consult broadly with workers, unions, advocates and academics.

3 Harry W. Arthurs (2006), *Fairness at Work: Federal Labour Standards for the 21st Century*. Federal Labour Standards Review. Ottawa: Human Resources and Skills Development Canada, p. x

4 Ontario Ministry of Labour (2017), *The Changing Workplaces Review—Final Report*, p. 12.



on the [legislation].” This review—initiated and resourced by the Ontario provincial government—stands in stark contrast to the narrow scope of the BC Law Institute review process, which does not have the mandate to consult broadly with workers, unions, advocates and academics. The BC Law Institute also does not have appropriate resources from the BC government, relying instead on an all-volunteer committee.

Notably, The Changing Workplaces Review’s recommendations are intended to modernize employment standards legislation through the creation of a Workplace Rights Act. As the Changing Workplaces Review Special Advisors note, a new Workplace Rights Act would be “an important and necessary step in conveying to all Ontarians that being an employee in a workplace carries with it fundamental rights” and “a constant reminder ... to employers of their obligations and the need to respect the rights of employees.”⁵

Importantly, as well, the Changing Workplaces Review’s Special Advisors acknowledge that recommendations to modernize legislation and strengthen workers’ rights must not only exist on paper; these rights must be enforced. In making this point, the Special Advisors call for a “culture of compliance” that must include:

- increased awareness by employees and employers of their legal rights and responsibilities;
- increased protection for employees who exercise their rights;
- strategic enforcement;
- access to justice; and
- consistent enforcement and stronger sanctions and deterrence.⁶

In BC, the Victoria Retail Action Network (RAN), in collaboration with Vancouver Island Public Interest Group (VIPIRG), conducted a pioneering community-based research project involving a survey and focus groups with workers in precarious employment in Greater Victoria. In fall 2015, the researchers talked to over 50 workers in various roles and diverse sectors of the

⁵ Ibid., p. 11.

⁶ Ibid., pp. 56-57.

retail, food service, and hospitality industries, and found common issues and themes. The findings of this research were published in spring 2016 in a report by VIPIRG, titled *Part-Time, Poorly Paid, Unprotected: Experiences of precarious work in Retail, Food Services, & Hospitality in Victoria, BC*.⁷

The key contribution of the VIPIRG report is its exploration of the main concerns of workers in these sectors: low wages, lack of health and safety, poor treatment, and workplace injustice. The research found that workers in the retail, food service and hospitality industries face job instability and insecurity; earn low wages; often don't receive benefits, such as paid sick days, vacation, or health benefits; typically are not unionized; have minimal control over their working conditions; and face poor treatment by employers.

Among the workers surveyed, a significant proportion experienced some form of wage theft. For example, 42 per cent worked more hours than they were paid for, and 41 per cent were not paid overtime pay when it was accrued. Only three of 53 workplaces surveyed provided paid sick days. Most of the workers surveyed worked part-time jobs, and many were seeking additional work hours and, therefore, involuntarily working part-time. It was also found that part-time employees are excluded from benefits and job security.

Scheduling was another area of concern. Last minute scheduling was found to be very common, as many respondents reported receiving their work schedules only a day or two in advance. On-call scheduling was also found to be an increasingly prevalent practice.

The RAN/VIPIRG report identifies a number of limitations in the BC ESA that severely disadvantage workers in the retail, food service and hospitality industries:

- Workers in their three-month probationary period, who are not afforded protection under the ESA, can be fired without cause, notification, or compensation.
- There is no provision for paid sick days.
- There is no regulation of scheduling, no guarantee for stability of hours, and no protection from on-call scheduling.
- Filing a complaint is difficult; many workers are deterred from taking action due to the intimidating power imbalance between workers and employers.
- The complaints process is rife with power imbalance and provides little support. Workers must communicate their issues using legal jargon, they must produce evidence that their employer neglected to take responsibility, and they must detail and defend their traumatic incidents to a government authority.
- The onus of enforcement rests with the worker.

There is growing recognition that labour laws must be modernized and strengthened in order to reflect the realities of today's labour market. The changing nature of work, including the growth of precarious and non-standard forms of employment, requires that governments protect workers' rights and ensure decency and fairness in the workplace. By documenting workers' stories and the failure of government policy to address abuse and exploitation in the workplace, this report contributes to the mounting research evidence that employment standards reform will protect and improve the lives of British Columbian workers and, ultimately, foster a more inclusive and economically just economy and society.

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7 Stephanie Hardman (2016), *Part-time, Poorly paid, Unprotected: Experiences of precarious work in Retail, Food Services, & Hospitality in Victoria, BC*, Victoria: Vancouver Island Public Interest Research Group. Accessed at: <https://vipirg.ca/s/VIPIRG-RAN-2016-Parttime-poorly-paid-unprotected.pdf>.

Workers' Story Forums

How We Gathered Stories of Exploitation & Abuse

Workers who attended our workers' story forums, or who contacted us by phone, email or social media, wanted their stories heard, so that changes can be made. This report gives a voice to those workers by referencing their stories in support of the ESA changes being advanced by the BC Employment Standards Coalition.

IN LATE 2016, THE BC EMPLOYMENT STANDARDS COALITION began collecting workers' bad job stories through a series of open workers' story forums at different locations in Metro Vancouver and Victoria. At these forums, workers were interviewed about their negative employment experiences. They were asked specifically about wage theft and other employment standards violations, the inadequacies of the current enforcement regime, and areas where the Act does not provide the kinds of rights and protections needed by the precariously employed. The coalition collected, documented and analyzed 145 workers' stories, which were supplemented with additional stories from previously published employment standards and labour policy reports.

Workers who attended our workers' story forums, or who contacted us by phone, email or social media, wanted their stories heard, so that changes can be made. This report gives a voice to those workers by referencing their stories in support of the ESA changes being advanced by the BC Employment Standards Coalition.

The coalition's objective in producing this report is to publicly document the inadequacies of the current minimum employment standards in BC. This report is also intended to encourage both the BC Law Institute and the next provincial government of the need to significantly reform and modernize the ESA and its enforcement, so that all workers in BC are guaranteed decent working conditions.

The Employment Standards Coalition has taken great care to protect the identities of the workers whose stories appear in this report. Unless they stated that they wanted their identities and/or employers to be revealed, they have been given pseudonyms.

Also incorporated into this report are the workers' stories and employment standards issues generated by the recent research reports of Andrew Longhurst (*Precarious: Temporary Agency Work in British Columbia*, 2014), Stephanie Hardman (*Part-Time, Poorly Paid, Unprotected: Experiences of Precarious Work in Retail, Food Service, & Hospitality in Victoria, BC*, 2016), the Migrant Workers' Dignity Association (*Beyond Our Plates: A Brief Report of the Lives of Migrant Agricultural Workers*, 2016), the West Coast Domestic Workers' Association (*Labour Trafficking & Migrant Workers in British Columbia*, 2014), First Call: BC Child and Youth Advocacy Coalition (*What's Happening to Our Children? A Look at Child Work-Related Injurious Claims in BC Over the Past 10 Years*, 2009, and *Child Labour is No Accident: The Experience of BC's Working Children*, 2013), and case files of the West Coast Domestic Workers' Association.

Table 1. Summary of workers' incidents reported to BC Employment Standards Coalition, 2016

CATEGORY	NUMBER OF INCIDENTS
1. Wage Theft	89 (35 per cent)
Included in category: <ul style="list-style-type: none"> ▪ Improper termination or no severance pay ▪ Non-payment or incorrect payment of overtime prem. ▪ Improper vacation pay ▪ Required to work through unpaid lunch break ▪ Improper or no pay ▪ Improper deductions from pay ▪ Improper handling of tips (tip theft) or no worker control over tips ▪ Monthly instead of semi-monthly pay days ▪ Illegal recruitment fees ▪ Not paid for all part-time hours worked ▪ No on-call pay ▪ Pay cut due to performance ▪ Not paid for travel time ▪ Not paid while training/job shadowing ▪ Improper withholding of commission earnings 	
2. Abusive/Unhealthy Workplace	71 (28 per cent)
Included in category: <ul style="list-style-type: none"> ▪ Verbal abuse ▪ Harassment, including sexual harassment or assault ▪ Psychological abuse ▪ Acrimonious environment ▪ Discrimination 	
3. Scheduling/Workload	53 (21 per cent)
Included in category: <ul style="list-style-type: none"> ▪ Compulsory overtime ▪ Unreasonable schedules ▪ Frequent short notice schedule changes ▪ Unreasonable deadlines ▪ Workload issues ▪ Excessive long hours of work ▪ Reduced hours of work ▪ Difficulty obtaining personal leave ▪ Inadequate breaks ▪ No accommodation for family responsibilities ▪ No accommodation for return to work light duties 	
4. Exclusions from ESA	18 (7 per cent)
Included in category: <ul style="list-style-type: none"> ▪ Exclusions from hours of work, overtime & statutory holiday provisions 	
5. Employment Standards Branch Complaint Handling	16 (6 per cent)
Included in category: <ul style="list-style-type: none"> ▪ Unhelpful ▪ Undue pressure to settle through mediation ▪ Lack of translation services ▪ Fear of retribution ▪ Fear of retaliation ▪ Lack of convenient access ▪ Adjudication hearings by phone ▪ Self-help kit form problems ▪ Unsupportive officers ▪ Refusal to investigate 3rd party complaints 	
6. Abuse of Temporary Foreign Workers	7 (3 per cent)
Included in category: <ul style="list-style-type: none"> ▪ Various forms of abuse 	

The BC Employment Standards Coalition collected 145 stories of exploitation and abuse in the workplace, which often included violations of the BC ESA and Regulations.

WHAT THE STORIES TELL US

An overwhelming majority of workers' stories referenced employer violations of the ESA with respect to "wage theft", lack of meal breaks, miss-classification of employees as self employed, no vacation or other statutory benefits, monthly instead of semimonthly pay days, violation of employment contracts, improper termination, improper layoff, excessive hours of work, fees charged for employment of temporary foreign workers, improper payroll records and records of employment, denial of leave for medical appointments and bereavement, and fear of retribution (discrimination, penalization, termination, blacklisting) for complaining.

SUMMARY OF WHAT WE HEARD

The BC Employment Standards Coalition collected 145 stories of exploitation and abuse in the workplace, which often included violations of the BC ESA and Regulations. Coalition members coded and grouped the workers' stories based on the violations and incident reported. There were approximately 254 incidents of exploitation or abuse, which are summarized in Table 1 above.

Decent Hours, Decent Work

Khalela has worked as a restaurant food runner at the Irish Times Pub and The Pennyfarthing. At the Irish Times, she was getting minimum wage, and her shifts changed from week to week. She also recalls often being sent home after working only two hours, during the winter. At The Pennyfarthing, split shifts were the problem. Khalela left home at 9 a.m. and worked from 10 a.m. to 2 p.m. Then she had to go back and work from 5 p.m. to 9 p.m., and wouldn't get home until 9:30 p.m. By the end of an 11-hour workday, she had only earned \$90.

Jeyson was a maitred' and host/bartender at the Harbour House Restaurant. His Sunday to Saturday weekly schedule was posted the night before the work week started.

THE ESA GIVES EMPLOYERS SUBSTANTIAL CONTROL OVER HOURS of work and scheduling. Some people work too many hours and some workers have too few. Violations of overtime and hours of work standards were prominent among the stories received. Workers also complained about the many confusing industry and occupational exclusions and special rules for hours of work and overtime, and that there is no ceiling on maximum hours of work. Similarly, there is no real floor on hours of work. Employers can, and do, schedule workers for one or two hour shifts. The ESA also does not require employers to guarantee minimum hours of work in a week.

Many service workers' employers expect them to be available five days per week but will only schedule them to work two or three days. There is no ESA requirement to provide work schedules. Prior to the 2002 changes to the ESA, employers were required to display hours-of-work notices in each workplace where all employees could read them. The ESA also required, prior to 2002, a 24-hour shift change notice (unless the employee was paid overtime wages or a shift was extended before it ended, as a result of the change).

The expectation that workers will be available for erratic shifts creates underemployment, as workers are prevented from taking other work due to scheduling conflicts. Workers bear the costs of unpredictable hours through underemployment, having to finance employers' "just-in-time" scheduling by carrying debt through weeks of insufficient hours, or relying on friends or family for financial support.

In Alberta, every employer must notify their employees of shift start and end times time by posting notices that can be seen by employees (or by any other reasonable method). An

Many service workers' employers expect them to be available five days per week but will only schedule them to work two or three days.

employer must not require an employee to change from one shift to another without at least 24 hours' written notice and eight hours of rest between shifts. In Saskatchewan, employers must give employees notice of their work schedules at least one week in advance, and must provide employees written notice of a schedule change one week in advance.

After consultations with various unions and employee advocates, the Ontario Changing Workplaces Review concluded that a "lack of scheduling for part-time employees in particular often results in unwarranted hardship for employees who deserve some advanced notice of their employer's expectations with respect to hours of work."⁸

Employers benefitted from other significant reductions to the maximum hours of work and overtime pay provisions of the BC ESA that were made in 2002. Double time pay for work in excess of 11 hours per day and 48 hours per week was changed to double time only after 12 hours per day, and double time for work in excess of 48 hours per week was eliminated.

Recommendations

- There should be no overtime, hours of work exclusions or special rules. All workers should be covered by the same minimum standards.
- The overtime averaging provisions of the ESA should be repealed.
- All overtime work should be voluntary, except in emergency situations, as in the Manitoba legislation: "An employer's management rights do not include an implied right to require an employee to work overtime."
- Employers should be required to offer available hours of work to those working less than full time before new workers performing similar tasks are hired.
- Employers should be required to post work schedules two weeks in advance, including work and shift start and end times, and meal breaks scheduled during the work period.
- Employees should receive the equivalent of one hour's pay if the schedule is changed with less than a week's notice, and four hour's pay for scheduling changes with less than 24 hours' notice.
- Workers must be able to ask employers to change schedules without penalty (e.g. protection from reprisals).
- The ESA should provide a family friendly scheduling provision so that employees affected by planned shift schedule changes must formally consent to the changes before they can be instituted (family responsibilities will constitute a valid reason for withholding consent to a shift schedule change).
- Restore the pre-2002 provision that the minimum number of hours of pay to an employee required to report for work is 4 hours if work has started, and 2 hours if work has not started.
- Restore the pre-2002 provisions that the maximum hours of work per day and per week before overtime wage rates apply at double time after 12 hours per day and 48 hours per week.
- All workers should receive a written contract of employment on the first day of employment, setting out their rates of pay, hours of work, statutory holidays with pay, annual vacations and other terms of employment that are at least equal to those contained in the ESA.

After consultations with various unions and employee advocates, the Ontario Changing Workplaces Review concluded that a "lack of scheduling for part-time employees in particular often results in unwarranted hardship for employees who deserve some advanced notice of their employer's expectations with respect to hours of work."

8 C. Michael Mitchell and John C. Murray (May 2017), *The Changing Workplaces Review: An Agenda for Workplace Rights, Final Report*, p. 296.

Where's the Floor? Exclusions Create Gaps in the Floor of Rights

Pat works as a live-in home support worker in the home of a disabled person who received 24-hour home support by an agency under contract with the government. The agency is the employer and the disabled person interviews and selects the worker to be employed by the agency. Pat is one of six people employed by the agency to provide 24 hour home care, 7 days a week. Pat works 20-hour shifts but is only paid for 16 hours. She is paid for 44 hours per week at \$15 per hour.

Pat asked her employer why she was not being paid overtime for working more than 40 hours per week. She was told that she was excluded from the overtime provisions of the ESA. After checking with the ESB, Pat discovered that live-in home support workers are excluded from the hours of work and overtime provisions of the ESA under Regulation 34(q). She also discovered that “domestic” workers [i.e. live-in-care givers] who reside at an employer’s residence and provide, cooking, cleaning, child care or other prescribed services, are not excluded.

Brian is a database/web/software developer working for a small geotechnical engineering consulting company. He does not receive overtime pay. He is paid 40 hours per week but not paid for overtime, even though sometimes he works Saturday and Sunday. Furthermore, he often works an additional 30 minutes to one hour per day during the week. The company does not pay overtime because of the “high technology company” exclusion provisions of the Employment Standards Regulation.

Malik is a carpenter who worked for Kennedy Construction for approximately one year. In September 2016, he was given two weeks notice of termination without severance pay. Then later the same day, he was fired on the spot. Malik called the ESB to question the legality of this practice and was told that construction companies are exempt from the termination provisions of the ESA.

After checking with the ESB, Pat discovered that live-in home support workers are excluded from the hours of work and overtime provisions of the ESA under Regulation 34(q). She also discovered that “domestic” workers [i.e. live-in-care givers] who reside at an employer’s residence and provide, cooking, cleaning, child care or other prescribed services, are not excluded.

THE ESA IS LEGISLATION DESIGNED TO PROVIDE BASIC MINIMUM TERMS and conditions of work that are applicable to all employers and employees. Variances, exceptions and exclusions are inconsistent with this principle of universality. However, the BC ESA and Regulation are replete with many exceptions, exclusions and special rules that permit some employers to avoid paying minimum wage, vacation pay, public holiday pay, overtime pay, and severance pay.

A significant proportion (12 per cent) of the workers' stories referenced discriminatory and exploitative exclusion from rights contained in the ESA. We received complaints from farm workers, home support workers, retail sales clerks receiving commission income, computer programmers employed by geotechnical engineers, and artists employed in the visual effects and digital animation film industries. Especially egregious is their exclusion from the hours of work and overtime, and the statutory holiday provisions of the ESA.

The largest group of workers to complain of their exclusion from the hours of work and overtime and the statutory holiday provisions were those that have been improperly classified as "high technology professionals."

The largest group of workers to complain of their exclusion from the hours of work and overtime and the statutory holiday provisions were those that have been improperly classified as "high technology professionals."

"I was recruited from the U.S. to relocate to BC in 1996 by a prominent local computer animation firm of the day. I painfully discovered that many of the exploitative wage and employment practices of high-tech employers were and still are in stark contrast to the popular view of pampered gold-collar workers sitting on a fortune in stock options. My own experience is that the advent of the high-tech exemption legitimized firms that were already operating in blatant contempt of the ESA.

The exemption created a separate lower standard of fair compensation for high-tech employees vs. other similarly employed workers, a blatant violation of the concept of equal protection under the law in Canada."

Source: Letter received from a computer modeler and CAD technologist.

Ted has worked as a digital animation layout artist for five years, he has worked for four different companies, on television and feature films. When he was hired, he was not notified he would have to work weekends. He said that there is constant fear in the industry that if you refuse to work overtime, or on statutory holidays, there will be consequences. One small company that is a leader in 3D conversion technology is particularly bad. By signing a contract with this company, the worker agrees to being classified as a high tech employee, and to work 50 hours per week if required (with 10 of those hours unpaid). Employees who work on statutory holidays are instructed to take time off on another day so that the company does not have to pay time and one half.

For the past 18 years "high technology professionals" and "high technology companies" have been excluded from the hours of work, overtime and statutory holiday provisions of the ESA.

Under employment standards, the maximum daily and weekly hours of work after which overtime rates of pay must be paid are eight hours and 40 hours respectively. The exemption of high tech workers from these basic provisions means that they can be required to work longer daily and weekly hours without the benefit of overtime pay, which they invariably are

required to do. This exemption therefore represents a significant and unreasonable wage subsidy to high tech companies at the expense of their employees.

Submissions made to the Ontario Changing Workplaces Review, with respect to the exemption of information technology professionals from the ESA, were echoed by a significant number of BC high tech workers, particularly those in the digital animation and visual effects industry who attended our workers' story forums. These high tech workers all complained about their working conditions. They specifically cited the exploitative and discriminatory nature of their exclusion from the right to receive overtime pay (and in some cases *any* pay) for work beyond an eight-hour day and 40-hour work week.

There are some troubling myths and misperceptions about the industry that underlie the exemption of high tech workers from basic employment rights and protections. It is imagined that high tech workers are somehow removed from the drudgery and exhaustion of other more traditional occupations. Oddly, it is assumed they don't have to balance the same work-home-life challenges and obligations as other workers. It appears that this exemption is in place because it is imagined that all high tech workers are young and childless, happy to work late hours and camp-out at work because work at high tech firms is so enjoyable and stimulating? It incorrectly suggests that all these workers are content to trade in their rights for easy access to ping-pong tables and a lax dress code.

There is no logic to the presumption that the work life of a receptionist or a computer programmer in the high tech sector is fundamentally different from a receptionist or a computer programmer in any other industry, and therefore undeserving of basic overtime rights. The simple truth is that the high tech sector is a workplace like any other. And the workers in that industry need and deserve the same protections.

In submissions made to the Ontario Changing Workplaces Review, it was argued that the cost of exemptions is borne not only by employees not covered by the ESA who suffer lost income and insufficient time off, but also that there is a social cost to health and safety resulting from excessive overtime and long work hours. As noted in the 2016 interim report of the Ontario government's Changing Workplaces Review, "Unwarranted or out-dated exemptions may have unintended adverse impact on employees in today's workplaces. The concern is that many employees may be denied the protections under the ESA that are essential for them to be treated with minimum fairness and decency."

There needs to be a universal approach to coverage under the ESA, which effectively provides basic minimum standards for all workers. The starting point should be that all workers, regardless of type of work or industry, are entitled to minimum employment standards. As stated by the Ontario Changing Workplaces Review Special Advisors in their interim report, exemptions from the ESA are inconsistent with the principle of universality—which is that minimum terms and conditions set out in the ESA should be applicable to all employees.

Recommendation

There should be no exclusions or exemptions from provisions in the ESA, and no special rules.

There is no logic to the presumption that the work life of a receptionist or a computer programmer in the high tech sector is fundamentally different from a receptionist or a computer programmer in any other industry, and therefore undeserving of basic overtime rights. The simple truth is that the high tech sector is a workplace like any other. And the workers in that industry need and deserve the same protections.

Temporary Agency Employment

There is an urgent need for progressive policy solutions to improve the economic security of temporary agency workers and address the persistent employment standards violations associated with this type of precarious employment relationship.

THE BROAD CATEGORY OF “TEMPORARY EMPLOYMENT”—including contract, seasonal, casual and temp agency work—has been on the rise in BC. Between 2004 and 2013, permanent employment accounted for 76 per cent of new BC jobs, and temporary employment accounted for 24 per cent. In the years following BC’s recession (2009–2013), 60 per cent of BC jobs created were permanent and 40 per cent were temporary.⁹

More specifically, “temporary agency work” refers to workers engaged in a triangular employment relationship, where they are recruited by an employment agency and offered a temporary assignment in the client firm’s workplace, which workers may accept or decline. The employment agency is the employer of record.¹⁰ The employment services industry, a proxy measure of temporary agency work, is growing. In BC, the industry grew from 8,848 jobs in 2004 to 19,580 by 2013; operating revenues increased from \$355 million in 2004 to \$675 million in 2012.¹¹

A Canadian Centre for Policy Alternatives (CCPA-BC) report found that temporary agency work is a type of precarious employment, based on qualitative and statistical evidence of the following: limited duration and high risk of termination; workers’ lack of control over working conditions and the amount and pace of work; lack of protection, particularly through the ESA ; low incomes; and debt burden associated with temporary agency work. The research report also uncovered a number of violations of the ESA, including approximately two-thirds of Lower Mainland employment agencies operating without a license from the ESB—one of the few legislated standards for employment agencies in BC.

The following stories provide additional evidence to illustrate how temporary agency work is a form of precarious employment. There is an urgent need for progressive policy solutions to improve the economic security of temporary agency workers and address the persistent employment standards violations associated with this type of precarious employment relationship.

9 Andrew Longhurst (2014), *Precarious: Temporary Agency Work in BC*, Vancouver: Canadian Centre for Policy Alternatives — BC Office, p. 6. Available at: [https://www.policyalternatives.ca/sites/default/files/uploads/publications/BC per cent20Office/2014/07/ccpa-bc_precariousTempWork_fullReport.pdf](https://www.policyalternatives.ca/sites/default/files/uploads/publications/BC%20per%20cent20Office/2014/07/ccpa-bc_precariousTempWork_fullReport.pdf).

10 Temporary agency workers are separate and distinct from temporary foreign workers. See *ibid.*, p. 10.

11 *Ibid.*, p. 6.

MICHAEL'S STORY: FROM TEMP AGENCY WORKER TO OVERSEEING ILLEGAL PRACTICES IN THE TEMPORARY EMPLOYMENT INDUSTRY

On a temp assignment with a logistics company, employed by a large multi-national temp agency, Michael was denied vacation after 27 months on the job (nor was he paid statutory holiday pay). When he complained and attempted to use the self-help kit,¹² the temp agency retaliated by terminating his employment.

Mediation through the ESB took six months. The temp agency claimed that the work assigned had ended, suggesting that his claim was invalid. Ultimately, the temp agency agreed to pay liability due to the length of service, and provide another two weeks of pay. Michael did not find this sufficient, but the ESB mediator believed that he should accept the offer. Michael had to fight for the file to proceed to the adjudication stage, in which the ESB would make a decision on the matter. Michael was told by the ESB that it could not proceed because he had not settled during mediation. Under BC's current employment standards regime, there is pressure placed on complainants to settle in mediation rather than having the complaint resolved through adjudication.

Based on the current ESA, the ESB only considered the temp agency as the employer of record, meaning that the client firm who oversees the day-to-day work of the temp agency worker (and part of the triangular employment relationship) is not held liable or responsible under the ESA. However, Michael had written evidence that the third-party client firm (the physical worksite), would have him replaced if he attempted to take his statutory vacation entitlement under section 57 of the ESA.

Michael noted that he was instructed to remove evidence from his submission of evidence to the ESB for adjudication. In the ESB's determination, it found that the temp agency had not violated section 57 of the ESA by denying Michael his statutory vacation time. However, this determination was overturned on appeal to the BC Employment Standards Tribunal.

The temp agency had promised permanent employment if the client firm wanted Michael as a permanent employee. The client firm expressed interest multiple times—at six months, one year, and after 27 months of Michael working on assignment for the same client firm. The temp agency had a three-month “buy-out” clause provision that would require the client firm to pay the temp agency if they wanted to hire the worker directly as an employee. Yet, Michael was not made a permanent employee with the client firm even though the client firm had expressed interest after the buy-out clause provision had expired.

Instead, the temp agency chose to fire Michael in order to continue benefiting financially from its relationship with the client firm. In other words, the temp agency preferred to keep a good worker on its own payroll rather than lose this worker if he transitioned into direct, permanent employment.

Michael was frustrated when he found that he was not allowed to file a complaint based on a violation of section 4 the Employment Standards Regulation because it only relates to the licensing of a temporary employment agency, and the ESB interprets this to mean that workers cannot use this section of the Regulation as grounds for a complaint.

In addition to his experience as a temporary agency worker, Michael oversaw administration of scheduling for another temporary employment agency for five years. During his time at the temp agency, about 900 workers passed through the agency's payroll. Michael was responsible for the payroll hours and was instructed by the temp agency—his employer—to “doctor” the hours recorded to reduce the hours paid out. In order to prevent workers from

Based on the current ESA, the ESB only considered the temp agency as the employer of record, meaning that the client firm who oversees the day-to-day work of the temp agency worker (and part of the triangular employment relationship) is not held liable or responsible under the ESA.

¹² In 2002, the BC government introduced the self-help kit which requires that employees first confront their employer with their complaint before being permitted to file a written complaint with the Employment Standards Branch.

accumulating overtime, the employer would lay employees off. Michael attempted to file a complaint as a “whistleblower” with the ESB, but because he was not an affected employee, he was instructed that he could not file a complaint.

SAM'S STORY: WAGE THEFT AS TEMPORARY AGENCY WORKER IN THE HOTEL INDUSTRY

Sam experienced wage theft with a temporary employment agency. He responded to an employment ad for an assignment in the hotel industry. After working the four-hour shift, he never received further offers of employment from the temp agency nor was he paid for the four-hour shift he worked. Sam has pursued a complaint with the ESB by using the self-help kit. To date, his complaint has not been resolved and the wages owed to him are outstanding.

Recommendations

Based on these temporary agency workers' stories of economic insecurity and employment standards violations, the BC government should adopt the comprehensive recommendations from the 2014 Canadian Centre for Policy Alternatives report that echoes research evidence and recommendations from the Toronto Workers' Action Centre's 2015 report *Still Working on the Edge*.¹³

- Strengthen *Still Working on the Edge* enforcement of the ESA. Restore the enforcement capacity of the ESB and conduct regular audits of employment agencies.
- Ensure employment agency licensing compliance, and impose higher penalties on both unlicensed employment agencies and client firms that use unlicensed agencies.
- Eliminate the self-help kit and dispute resolution process, and ensure that workers who believe their workplace rights have been violated have the ability to complain directly to the ESB.
- Modernize the ESA to adequately regulate employment agencies and the triangular employment relationship.
- Adopt the principle of equal treatment. The ESA should ensure equal treatment for temporary agency workers performing work comparable to that of permanent workers, including pay, statutory and employer-sponsored benefits and working conditions.
- Require that all temporary agency workers be provided with written information about their employment rights; detailed information about the employment agency with which they are registered; and, for each assignment, a signed information document outlining the pay, hours, assignment duration and working conditions being offered.
- Provide certainty in the length of temporary agency assignments by requiring employment agencies to offer a new assignment at the same pay rate or compensation for lost pay if an assignment prematurely ends.
- Encourage transition to permanent employment by prohibiting “buy-out clauses” that impose a fee on client firms that wish to offer direct employment to temporary agency workers, and prohibit clauses that restrict such mobility.

The BC government should adopt the comprehensive recommendations from the 2014 Canadian Centre for Policy Alternatives report that echoes research evidence and recommendations from the Toronto Workers' Action Centre's 2015 report.

13 Mary Gellatly (2015), *Still Working on the Edge: Building Decent Jobs from the Ground Up*, Toronto: Workers' Action Centre. Available at: http://www.workersactioncentre.org/wp-content/uploads/dlm_uploads/2015/03/StillWorkingOnTheEdge-WorkersActionCentre.pdf.

- Increase the minimum wage to reduce the economic hardship associated with temporary agency work.¹⁴
- Require temporary employment agencies to notify their assignment workers when assignments have been terminated. If notice is not given, unless the employee is referred to work for other agency clients, termination pay is payable by the agency for the number of days equal to the amount of notice (amounts must be paid within 48 hours following the end of the assignment¹⁵).

14 Ibid., pp. 7-8.

15 See C. Michael Mitchell and John C. Murray (May 2017), *The Changing Workplaces Review: An Agenda for Workplace Rights, Final Report*, p. 326.

Employer Misclassification of Workers

Employers cannot legally get out of their statutory obligations by misclassifying workers as “independent contractors.” But the label has an effect. Workers often have no choice but to accept what employers tell them...

MISCLASSIFICATION OF WORKERS OCCURS WHEN AN EMPLOYER classifies a worker as an independent contractor (e.g. self-employed) when they should actually be classified as an employee under the ESA.

Employees are defined under the ESA. The legal test often depends on how much control and direction the worker is subject to by the business, as well as the workers’ independence, use of the firm’s equipment, degree of financial risk, and opportunity for profit.¹⁶ Even if the worker agrees to be an independent contractor, it does not automatically mean they are independent contractors under law.

Importantly, as the Toronto Workers’ Action Centre states:

Employers cannot legally get out of their statutory obligations by misclassifying workers as “independent contractors.” But the label has an effect. Workers often have no choice but to accept what employers tell them... Practices such as misclassification have become increasingly commonplace, which means that officials within regulatory regimes begin accepting the employer’s assertions without looking at the substantive employment relationship.¹⁷

Why do employers misclassify workers? As the Workers’ Action Centre notes, “[e]mployers misclassify to save on payroll, avoid complying with the ESA and other labour laws, and to shift liability risks on to workers.”¹⁸

16 Canada Revenue Agency (n.d.), *Employee or Self-Employed?* Available at: <http://www.cra-arc.gc.ca/E/pub/tg/rc4110/rc4110-16e.pdf>; Employment Standards Branch (2016), *Employee or Independent Contractor, Factsheet*. Available at: http://www2.gov.bc.ca/assets/gov/employment-business-and-economic-development/employment-standards-workplace-safety/employment-standards/factsheets-pdfs/pdfs/employee_or_contractor.pdf.

17 Mary Gellatly (2015), *Still Working on the Edge: Building Decent Jobs from the Ground Up*, Toronto: Workers’ Action Centre, p. 18. Available at: http://www.workersactioncentre.org/wp-content/uploads/dlm_uploads/2015/03/StillWorkingOnTheEdge-WorkersActionCentre.pdf.

18 Ibid.

MISCLASSIFICATION IN THE APPLIED SCIENCES

Sarah: While working towards her graduate degree in the applied sciences, Sarah is working for a small firm that requires their staff, who work out of the company office, to invoice the company for their regular hours of work and remit GST and income tax. The firm pays WCB premiums for all employees but not does remit CPP or EI premiums, or deduct income tax as required by employers. Sarah works 20-30 hours per week in the company office, and 40-50 hours per week during the summer when conducting fieldwork.

The company owner has told all the staff that they are “self-employed,” yet the owner refers to them in front of clients as “employees.” Sarah and the other staff members consider themselves employees since they work out of the company office and use company tools and equipment to perform work as assigned by the employer. Sarah does not receive vacation pay or statutory holiday entitlements and believes she has been misclassified as an independent contractor. She also observed that an employee who became pregnant did not receive paid leave. As a foreign student in Canada, working on a student visa, Sarah fears reprisal from her employer (or even deportation) should she make a complaint.

MISCLASSIFICATION IN THE CONSTRUCTION INDUSTRY

Malik was misclassified as an independent contractor by a company in the construction industry. Malik and his co-workers worked solely for the company. The company supplied them with the necessary tools, equipment and materials. The company paid WCB premiums but did not remit CPP or EI premiums or deduct income tax as required.

In addition to misclassification as an independent contractor, Malik was terminated without proper notice or pay in lieu of notice. He was frustrated to learn that construction workers are treated as second-class workers under the ESA because they are excluded from the employment termination protections afforded to other workers.

.....

Cory worked for a tile installer from March 2016 to March 2017, working mostly alone on tile installation projects. Although he was paid every two weeks by cheque, Cory was told that he was self-employed. As a result, there were no deductions from his pay, or employer contributions and remittances for income tax, CPP and EI premiums. Cory, however, considered himself an employee, as his employer provided the tools, materials and equipment necessary for the work, and directed him in his work. Rather than terminate him, the company just stopped calling him in for work.

Malik was misclassified as an independent contractor by a company in the construction industry. Malik and his co-workers worked solely for the company. The company supplied them with the necessary tools, equipment and materials. The company paid WCB premiums but did not remit CPP or EI premiums or deduct income tax as required.

Funding cuts and changes to the ESB have left it ill-equipped to protect vulnerable workers and adequately enforce legislation and deal with the realities of today’s increasingly precarious labour market. The bottom line should be that employers cannot avoid their statutory obligations by misclassifying workers as independent contractors when they are actually employees. As the 2014 Canadian Centre for Policy Alternatives report concludes, “[i]t is inappropriate to expect vulnerable workers in insecure positions to advocate for themselves.”¹⁹

19 Ibid., p. 7.

Recommendations

In order to ensure that employees are not misclassified, the BC government needs to:

- Strengthen enforcement of the ESA.
- Restore the enforcement capacity of the ESB.
- Eliminate the mandatory “self-help” complaints and compulsory mediation dispute resolution process.
- Ensure that workers who believe their workplace rights have been violated have the ability to complain directly to the ESB.

Wage Theft

WAGE THEFT OCCURS WHEN EMPLOYERS FAIL TO PAY WORKERS for hours worked. The coalition heard stories that ranged from simple non-payment of wages to examples of employers coercing workers into unpaid overtime with the threat of discipline. These stories involved violations of almost every aspect of employee compensation rights contained within the ESA, including:

- hours worked without pay;
- improper or no termination/severance pay;
- non-payment or incorrect payment of overtime wages;
- improper vacation pay;
- improper deductions from pay;
- improper handling of tips, arbitrary tip pooling not controlled by workers, tip sharing with managers or to pay for dine and dash or breakage;
- no pay for travel time;
- no pay while training or job shadowing;
- withholding of commission earnings;
- improper recording and payroll reporting of commission earnings; and
- monthly instead of semi-monthly paydays.

As previously noted, 89 (35 per cent) of the stories reported through the workers' forums involved some form of wage theft, making it the most common type of complaint. However, most cases of wage theft go undetected because the workers affected are unaware of their rights, are intimidated by the ESB complaints process or fearful of retribution. Many of the employers in these stories allegedly leveraged their power to discourage their employees from seeking their full pay. Workplaces where employees were demeaned and discriminated against were also often sites of wage theft because of employer abuse of power. This was especially the case where workers were marginalized by gender, race, ethnicity, poverty, or disability.

Thirty-five per cent of the stories reported through the workers' forums involved some form of wage theft, making it the most common type of complaint. However, most cases of wage theft go undetected because the workers affected are unaware of their rights, are intimidated by the ESB complaints process or fearful of retribution.

Because the ESB only responds to employee complaints once the employees have completed and presented to their employers a “self-help” complaint form, the majority of wage theft cases go undetected. Third party complaints or anonymous tips of violations are not accepted by the ESB.

Brad is a delivery driver and glass installer for a national auto glass company. He stated that because of a significant workload increase, he and his co-workers must start work 20 to 30 minutes early every day without pay. They also have to forego coffee and lunch breaks in order to complete their daily assignments.

John worked in a professional office and was not being paid for overtime. He was given more work than could be handled during normal hours and was expected to stay late to finish it. He was given a company cell phone and expected to be available 24/7. While on vacation, John completed eight hours of unpaid work using a laptop computer that he was asked by his employer to take with him.

Megan is a software developer for an engineering company. When she works overtime, she only gets paid her regular rate of pay. Alternately, she can choose to bank overtime for days off, hour for hour. Megan’s employer also requires her to be available for work at all times, but she is not paid for being on-call. She has reported for work within four hours of a call but only been paid two hours for the call-in. She does not receive overtime pay while working on-call during a weekend. Megan raised the issue of on-call and overtime pay with her employer, but was told there is no overtime pay for extra hours or for on-call extra hours.

Mel is a delivery driver for a retail and wholesale meat company. He reported that all of the employees at his company are “treated like shit” and expected to work for free after the 4 p.m. quitting time. Mel refuses to work overtime for free, but his co-workers regularly stay late without compensation (some of them work from 5 a.m. to 8 p.m. without overtime pay).

Mel is familiar with the ESB website but decided the process of filing a complaint was “not worth it,” and that he would not want to sit down with his employer to discuss his complaint. Mel thinks the process should change.

Because the ESB only responds to employee complaints once the employees have completed and presented to their employers a “self-help” complaint form, the majority of wage theft cases go undetected. Third party complaints or anonymous tips of violations are not accepted by the ESB, and because there is no pro-active investigation of employers known to systematically underpay employees, the majority of wage theft cases go undetected. Therefore there is no effective deterrence against these practices.

Even if an employee can demonstrate that they have not been properly paid, or the ESB makes a determination that wages are owed to an employee, the amount of wages an employer is required to pay is limited to six months before the date of the complaint or the date of the ESB determination. Prior to the ESA changes in 2002 unpaid wages could be claimed for up to two years before the complaint date. The reduction to just six months was therefore a significant concession to employers and a major loss of a right to employees, especially temporary foreign workers and other precariously employed workers. Regardless, due to the current process, workers who file wage theft complaints are only able to realistically do so once their employment has been terminated, even though the wage theft occurred from the start of their employment or extended over a number of months or years.

In the case of temporary foreign workers in BC on eight-month, two-year and three-year temporary work permits, they are restricted in any unpaid wage claim to the period six months prior to the date of a complaint. This means that they are not able to claim for the payment of illegal recruitment fees before they started work in BC (a common violation) if they wait more than six months to make a claim. It is also common for other precarious workers who have been improperly paid to not know that they face a penalty for not recovering unpaid wages if they wait several weeks or months to submit a complaint.

Clearly, the BC government's reactive compliance and complaints-based model of enforcement is not working to ensure that workers are entitled their workplace rights. Furthermore, there is no general deterrence to employers when there is little or no cost for being found in violation of the law. The penalty for the first violation of any one of the ESA's provisions is \$500.

Researchers Ron Saunders and Patrice Dutil note that the “practice of dealing with compliance one case at a time is expensive and risks overloading the available capacity.”²⁰ The BC government's reactive compliance model is not capable of addressing the structural features of the labour market that produces ESA violations. This is particularly the case with respect to new forms of work organizations, where responsibility for employment is being shifted to contractors, temp agencies, and workers, in highly competitive environments where pressure to cut regulatory corners is high²¹. As the Law Commission of Ontario concludes, “There is a general consensus that proactive enforcement is a much more effective mechanism for ensuring the protections of the ESA than the reactive system of responding to individual complaints.”²²

Recommendations

As recommended to the Ontario Changing Workplace Review Special Advisors, the BC government should implement ESA complaint procedures that afford ordinary British Columbians the opportunity for fair and just adjudication and enforcement of their rights²³. This is achieved by increasing employee and employer awareness of ESA rights and obligations; increasing protections of employees who exercise their ESA rights; consistent and strategic enforcement; access to justice; and stronger sanctions and deterrence.

Establishing a strategic enforcement regime requires a proactive enforcement system that is adequately resourced. Such a system would include spot checks, audits, and strategic collection and analysis of complaints and violations. Targeted inspections are also required, particularly in sectors where there are large numbers of vulnerable and precarious workers. Such a system would also encourage and permit anonymous and third-party complaints.

The time period for claiming unpaid wages claimed should also be extended to three years. This will ensure that temporary foreign workers and other precarious workers have a reasonable time period to recover illegal recruitment fees and unpaid wages.

For more discussion and recommendations regarding ESA enforcement, see “Complaints and Enforcement” on page 51.

Clearly, the BC government's reactive compliance and complaints-based model of enforcement is not working to ensure that workers are entitled their workplace rights. Furthermore, there is no general deterrence to employers when there is little or no cost for being found in violation of the law. The penalty for the first violation of any one of the ESA's provisions is \$500.

20 Ron Saunders and Patrice Dutil (2005), *New Approaches in Achieving Compliance with Statutory Employment Standards*, p2.

21 Mary Gellatly (2015), *Summary Report, Still Working on the Edge: Building Decent Jobs from the Ground Up*, Toronto: Workers' Action Centre, p. 9.

22 Law Commission of Ontario (2012), *Vulnerable Workers and Precarious Work*, p. 56.

23 C. Michael Mitchell and John C. Murray (May 2017), *The Changing Workplaces Review: An Agenda for Workplace Rights*, Summary Report, p. 11.

Psychological Harassment & Workplace Bullying

Among the workers we spoke with and the stories received, 71 of them reported incidents of bullying, harassment, verbal abuse, discrimination, and/or incivility (some cited multiple incidents of such treatment, and sometimes by more than one employer).

“[The manager] yells and swears at the top of his lungs to his sales staff... He humiliated a woman the second week I was there [by yelling] at her in front of all the staff.”

–**Barb**, administrative assistant & purchasing clerk

“When [I became] pregnant, a supervisor in charge complained [I] was using the bathroom too much.” –**Annie**, retail sales clerk

“In the past decade, I have been sexually assaulted multiple times and told I need to ‘suck it up’ with a smile on my face because it’s the nature of the business, and [because] I need to make those tips in order to put food on the table every month.”

–**Pilar**, restaurant server & bartender

THE CURRENT BC EMPLOYMENT STANDARDS ACT does not contain a provision that addresses bullying and harassment. This needs to change.

Among the workers we spoke with and the stories received, 71 of them reported incidents of bullying, harassment, verbal abuse, discrimination, and/or incivility (some cited multiple incidents of such treatment, and sometimes by more than one employer). These negative and/or aggressive situations ranged from sexual and physical assault to yelling and gossip, contributing to an overall unhealthy work environment. Too often, the worker had to leave their workplace or seek medical intervention (sometimes, they were fired for voicing their concerns).

“I’m 25 [and] I have truly given up on the labour market in this province. It is not worth the strain on my mental health and if this is what the future holds for my generation I would rather be dead.”

–**Pilar**, restaurant server & bartender

Recommendation

We recommend that the BC ESA include language that addresses bullying and psychological harassment, similar to the Quebec Act (An Act Respecting Labour Standards). The Quebec Act states that every employee has a right to a work environment free from psychological harassment. Psychological harassment means any vexatious behaviour in the form of repeated or unwanted conduct, verbal comments, actions or gestures that affect an employee's dignity or psychological or physical integrity, and that result in a harmful work environment.

Inclusion of language that addresses bullying and psychological harassment can help protect workers from the lasting and devastating effects of hostile or unwanted behaviours. Not only is bullying and harassment a strain on our public healthcare system, this behaviour can profoundly affect an individual's ability to find and retain work elsewhere.

Termination of Employment & Just Cause

Travis was fired from his restaurant job suddenly and via e-mail. Prior to his termination, he had never been written up for discipline. In the email, Travis' employer cited multiple customer complaints, but never communicated them directly. Since Travis was not given notice or terminated for just cause, the employer owes him one week of pay.

Lolita is a domestic worker/live-in caregiver. She became so stressed from having to work from 7 a.m. to 4p.m., six days per week, without breaks or vacation, that she ended up in the hospital. When the doctor said that Lolita was well enough to return to work, her employer disagreed and fired her. She had nowhere to go and had to ask friends if she could stay with them.

Theo was a millworker working for a Vancouver-area company. Rather than pay out overtime, his company was giving employees bonuses on their pay cheques. When Theo confronted his employer about this, he was fired.

Tina worked for a property management company for eight years. When she became sick with a serious throat infection, she took a week of sick leave. Her condition didn't improve after one week, so she took more time. When Tina returned to work, she was told that due to "restructuring," her position no longer existed. She was told she would receive two months of severance pay, paid out over the next two months.

AMONG WORKERS SURVEYED AT THE WORKERS' STORY FORUMS, 26 complained of improper or unjustified termination or no severance pay. In BC, an employer has the legal right to terminate an employee. The ESA requires an employer to give the employee written notice, compensation in lieu of notice, or a combination of the two. However, entitlement to written notice of compensation in lieu of notice only begins after three consecutive months of employment.

Compensation in lieu of notice is sometimes called severance pay. The maximum compensation in lieu of notice is eight weeks' pay for eight years of service. Compensation in lieu of notice plus any unpaid wages must be paid within 48 hours after the last day of work.

An employer does not have to give written notice or compensation for length of service to an employee who is terminated for "just cause." Workers can pursue protection from unjust dismissal through common law. However, this access to justice is typically only for higher income workers. Moderate and low income workers cannot afford the legal representation that is necessary in order to sue their employers for wrongful dismissal.

In Nova Scotia and Quebec, and for workers under federal labour standards legislation, there are unjust dismissal protections that allow employees to contest their termination and provide for a possible reinstatement by an independent arbitrator where no cause is found to exist. The intent of these statutory unjust dismissal protections is to prevent arbitrary and unfair terminations, enhance job security, avoid negative impacts on an employee who has been summarily dismissed, and provide remedies that include the possibility of reinstatement. A remedial authority is not available through the courts in a wrongful dismissal suit.

Recommendations

The BC Employment Standards Coalition calls for improvements to the termination provisions of the ESA as follows:

- Eliminate the three-month eligibility requirement for termination notice or pay in lieu of notice.
- Require employers to provide notice of termination, or pay in lieu of notice, based on the total length of employment, including seasonal employees who have recurring periods of layoff beyond the 13-week layoff period.
- Require employers to have "just cause" for terminating employment to protect workers from unjust dismissal.
- Implement an expedited adjudication process for workers who have been unjustly dismissed.

In Nova Scotia and Quebec, and for workers under federal labour standards legislation, there are unjust dismissal protections that allow employees to contest their termination and provide for a possible reinstatement by an independent arbitrator where no cause is found to exist.

Child Labour Standards in Urgent Need of Improvement

In 2003 the BC government passed Bill 37 which amended the ESA to effectively lower the province's work-start age from 15 to 12 by eliminating the requirement that an employer had to obtain a permit from the ESB before hiring a 12-to 14-year-old.

Justin was 12 when he started a job at an auto salvage company. On his first day, he was stacking car batteries and battery acid spilled on him, soaking through his clothes and burning his chest. He received no medical treatment on the worksite and was told to keep working. He still has scars on his chest from the acid burns.

Cara has permanent disabilities in her back and wrists from working with animals when she was 13. Cara's employer blamed her for incurring injuries and promptly fired her. When Cara's mother complained, the employer paid Cara some compensation for the injuries. However, Cara was not rehired and the employer never filed an injury report. Four years later, Cara still has debilitating pain and avoids using one of her hands.

Cory was 13 when he started working. He was hired to work construction cleanup at approximately 35 hours per week. Though the law requires an employer to obtain a letter of permission from a parent before hiring someone under the age of 15, Cory's parents weren't asked for such a letter. Cory was promised a video game as payment, which he never received. On one occasion, he fell through scaffolding and landed one story below. Cory's boss offered him a beer. He was in pain for about a week, and no WorkSafeBC accident report was filed.

THESE AND MANY OTHER STORIES have been gathered by First Call: The BC Child and Youth Advocacy Coalition, in their monitoring of the issue of employment standards for children since the ESA was changed in 2003.

In 2003 the BC government passed Bill 37 which amended the ESA to effectively lower the province's work-start age from 15 to 12 by eliminating the requirement that an employer had to obtain a permit from the ESB before hiring a 12-to 14-year-old. After this change, instead of having an ESB officer determine the suitability of a workplace for a 12- to 14-year-old, all that is required is a letter of permission from a parent to the employer, and government rarely checks to see if employers have these letters on file. Even when a letter of permission is signed, the implicit notion that a parent is responsible for assessing the safety of a workplace

is both false and dangerous. It is also contrary to section 115 of the Workers Compensation Act, which clearly states that every employer must ensure the health and safety of workers on their sites.

According to First Call, both the research data and the stories of young workers they collected make it abundantly clear that the deregulation of child labour in BC has resulted in hundreds of workplace injuries (some disabling for life), numerous instances of unchecked exploitation by unscrupulous employers, and negative impacts on many young people's education due to over work.

WorkSafeBC data show that since Bill 37 was passed, there has been a dramatic increase in annual payments for accepted disability claims related to children ages 12 to 14 who were injured on the job. Between 2004 and 2012, nine children were designated "long-term disabled" as a result of a work-related injury sustained when they were under the age of 15 years. Overall during this time period, WorkSafeBC paid over \$1.1 million in disability claims for 179 children injured on the job.

It is safe to say that these terrible accidents would likely not have occurred had the law not been changed to allow children as young as 12 to work in virtually every occupation, at almost all tasks and at all times of day. In fact, employment of these 12- to 14-year-old children would have been illegal prior to 2003.

Canada has recently ratified the International Labour Organization's Minimum Age Convention (Convention 138), which specifies that the minimum age "shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years." We have until June 2017 until it takes legal effect. Despite this new federal commitment and the research evidence on the negative impacts of BC's inadequate child labour standards, public statements and correspondence from the current and past BC government officials since 2003 have reinforced that they are not interested in reviewing the province's child labour policy.

Recommendations

- Establish a minimum work-start age of 16 in compliance with the ILO Convention 138.
- Impose restrictions on the occupations, tasks, and times of day that children can work.
- Increase ESB inspections of worksites where children are most likely to be working, including random inspections.
- Establish a child labour advisory group that includes a broad representation of child and youth advocates, including young people with recent work experience in the higher injury occupations.
- Track the employment of children through on-going data collection.
- Require WorkSafeBC to publish the same detailed injury claims reports on 12- to 14-year-olds that are currently produced for young workers (ages 15 to 24).

According to First Call, both the research data and the stories of young workers they collected make it abundantly clear that the deregulation of child labour in BC has resulted in hundreds of workplace injuries (some disabling for life), numerous instances of unchecked exploitation by unscrupulous employers, and negative impacts on many young people's education due to over work.

Farm Workers

Rajpal has worked for the same Indo-Canadian farm labour contractor since she came to Canada. She has picked berries on farms, and graded, washed and packed vegetables in a cannery. She lives with her multi-generational family in a basement suite.

On a typical day during the picking season, Rajpal wakes up at 4 a.m., cooks lunches for family members, and then gets ready for the farm labour contractor to pick her up. The contractor arranges where, when, and how long she will work. Depending on the crops, she works on farms in Pitt Meadows, Ladner and Cloverdale. During the agricultural season, Rajpal works eight to 10 hour days, and 12 hour days when picking berries. According to Rajpal, the conditions at some farms are bad: the washrooms are not clean; workers are not told about the pesticides that are used; lunchroom or shed facilities are not provided. As well, farmers do not provide rain gear. Sometimes supervisors are difficult to work for, not allowing workers to talk to one another, or not allowing them to eat lunch until three o'clock in the afternoon.

BC farm workers are a particularly vulnerable group of low-wage workers. Seasonal agricultural workers in BC face unique challenges to their economic security and access to the employment rights.

A “FARM WORKER” IS BROADLY DEFINED in the Employment Standards Regulation as a person employed in a farming, ranching, orchard or agricultural operation and whose principle employment responsibilities consist of any of the following:

- growing, raising, keeping, cultivating, propagating, harvesting or slaughtering the product of any of the above operations;
- clearing, draining, irrigating or cultivating land;
- operating or using farm machinery, equipment or materials for the above purposes; or
- direct selling of a product of any of the above farm operations if the sales are done at the farm operation and is only done during the normal harvest cycle for that product.

An important change to the definition of a farm worker, made by the Liberal government in 2003, was the expansion of the scope of “farm work” to include the initial washing, cleaning, sorting, grading or packing of an unprocessed product during the normal harvest cycle.

BC farm workers are a particularly vulnerable group of low-wage workers. Seasonal agricultural workers in BC face unique challenges to their economic security and access to the

employment rights. For too long, BC farm workers, most of whom are either recent immigrants or temporary foreign workers, have been the victims of discriminatory government policies and practices, making them among the lowest paid, vulnerable and abused workers in the province.

Most BC farm workers are either South Asian immigrants or temporary foreign workers. For most, either English is not their first language or they speak little or no English. Their options for finding alternative employment are few (or virtually none at all if they are temporary foreign workers), and they have little power to challenge their poor working conditions. Most troubling is that the largely South Asian immigrant farm workers employed in the Fraser Valley must depend on farm labour contractors who act as intermediaries between them and the farm or greenhouse owners. Although the workers may work on a variety of farms owned by different producers, they are the employees of the farm labour contractors. The contractors arrange where they will work, how much they will earn, and how they will travel to and from farms. Farm owners have long relied on contractors for a reliable workforce despite their history of exploiting immigrant farm workers and violating employment and safety standards.

There are 91 licensed farm labour contractors in BC who are licensed to employ approximately 7,000 workers. 86 of those contractors each employ between five and 400 farm workers in the Lower Mainland and Fraser Valley. The rest of the contractors employ farm workers in the Okanagan.

Most troubling for those farm workers who are employed under the federal Temporary Foreign Worker Program is that they are in a modern form of indentured slavery—their temporary employment contract ties them to the farm employer who brought them to Canada. If they object to their working conditions, submit an employment standards complaint, or attempt to join a union, they are threatened with loss of employment, deportation, and blacklisting or loss of future employment through the agency of the Central American and Caribbean governments that arrange for their employment in Canada.

Most troubling for those farm workers who are employed under the federal Temporary Foreign Worker Program is that they are in a modern form of indentured slavery—their temporary employment contract ties them to the farm employer who brought them to Canada.

A Richmond, BC, blueberry farmer who has twice been cited for withholding farm workers' pay is under investigation again, CBC News has learned.

Denmar Smith, of Jamaica, came to B.C. under Canada's temporary foreign worker program. Smith, 32, said he was drawn by the promise of minimum wage as a blueberry picker, which is more than he could earn for his family as a stone mason back home. The program promised that his employer, KNN, would pay his return trip to Jamaica. Smith is now \$800 out of pocket in unpaid wages and his airfare.

Denmar said that when he complained, he was told he could be deported—never to work in Canada or the U.S. again. "If we ask for our pay, they keep it longer," he said.

Fellow Jamaican Olando Miford also worked at KNN and said he, too, is owed about \$800. Miford also claimed that he was bullied and belittled. "They treat us worse than dogs, actually," Miford said. "It seems like I come in slavery."

Their allegations are just the latest against KNN Blueberries and Nijjer, who have faced a total of 33 complaints in the past nine years, most for a failure to keep records. They also have been penalized seven times and last year were fined \$13,000 for violations.

—CBC News, July 19, 2012

The number of temporary foreign workers employed on BC farms has grown from 50 in 2004, when the Seasonal Agricultural Worker Program (SAWP) was first implemented in BC, to between 4,000 and 6,000+ in recent years. They are employed on farms, orchards, vineyards, nurseries and ranches, from the Kootenay Valley to Vancouver Island.

A number of recent studies regarding the working conditions of BC farm workers have concluded the current conditions for BC farm workers are untenable in a modern democratic society. These studies have found that immigrant and migrant farm workers are at the mercy of a complex, confusing and controlling system that exploits, threatens and silences them. This system places temporary foreign workers in danger, and excludes them from a range of statutory employment rights and protections to which most other workers are entitled.

Already low paid, precariously employed and highly exploited, farm workers have suffered further over the past decade and a half, as the BC government bowed to the greed and political pressure of a powerful agricultural employers' lobby. The government has stripped farm workers of the entitlement to such basic rights and benefits as overtime pay, statutory holidays with pay, annual vacations with pay, and hours of work restrictions. The government has also excluded many farm workers from the right to receive the hourly minimum wage, and arbitrarily established minimum piecework rates for the harvesting of fruits, berries, vegetables and flowers. These piecework rates do not provide an hourly equivalent pay to the general minimum wage. In addition, farm workers who are only entitled to a minimum piecework rate, and not an hourly minimum wage, had their wage rates reduced by 3.9 per cent in 2003, frozen from 2003 to 2011, and frozen again from 2012 to 2015. As a result, the minimum piece work rates for farm workers have increased by only 11.6 per cent since 2001, compared to the general hourly minimum wage increase of 35.6 per cent over the same 15 year period for most other workers. Compare such incremental rates also to a 25.3 per cent increase in the cost of living in BC, and a 40.6 per cent increase in the cost of food, as measured by the Consumer Price Index.

The BC government has also reduced and all but eliminated regular, random and unannounced inspections of farm sites by workplace enforcement agencies, such as ESB and WorkSafeBC. The government has also failed to conduct rigorous health and safety inspections of migrant worker housing and the vehicles used by farm labour contractors and farm operators to transport farm workers, even though farm labour contractors have a decades-long history of systematic abuse of the immigrant farm workers they employ.

This system of government sanctioned abuse and exploitation of some of our most vulnerable workers must come to an end through the adoption of a new program of comprehensive labour rights in BC based on reasonable standards to ensure decent work in conformance with international labour conventions.

Recommendations

- Restore the right to regulated hours of work and overtime pay, statutory holidays with pay, and annual vacations with pay.
- Eliminate minimum piecework rates for the hand harvesting of fruits, berries, vegetables and flowers so that all farm workers receive at least the general hourly minimum wage.
- Restore the requirement that farm owners retain records of wages paid to employees of farm labour contractors on their properties, and restore farm owners' liability for workers' unpaid wages.

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- Strengthen inspection of farm sites and restore proactive monitoring teams such as the Agricultural Compliance Team so that enforcement of employment standards on farms is comprehensive and continuous.
- Conduct an independent review of the farm labour contracting system with direction to consider establishing a new not-for-profit hiring hall model for all farm workers—immigrant and temporary migrant.
- Establish independent, local agricultural human resources centres.
- Adopt comprehensive regulations for migrant worker housing provided by farm operators.
- Renegotiate provincial-federal agreements relating to the temporary foreign worker program: 1) to permit migrant farm workers to freely change employers and apply for permanent residency, 2) to ensure their employment contracts are actively enforced by federal and/or provincial authorities, and 3) to require the registration of all employers of temporary foreign workers with the ESB (see section on migrant workers for more comprehensive proposals).
- Vigorously enforce health and safety regulations.
- Reform the BC medical insurance plan so that migrant workers can receive coverage upon commencement of work in BC.
- Provide funding for community agencies to provide farm worker rights education and advocacy.

Migrant Workers

IN BC, TEMPORARY FOREIGN WORKERS can be found in a range of occupations, including caring for children and the elderly, trucking, agriculture, health care, trades and construction, tree planting, mining, fast food and hospitality. The most recent statistics show that by the end of 2014, 21,755 Temporary Foreign Workers held work permits for jobs in BC.

DOMESTIC WORKERS

Ms. W arrived in Canada as a Temporary Foreign Worker under the Live-in Caregiver Program. She began working for Ms. Y to take care of Ms. Y's elderly husband. She was grossly overworked and faced many instances of discrimination and verbal abuse at the hands of her employer.

Instead of working an average of six and a half hours per day, six days per week as discussed, Ms. W was forced to work incredibly long hours. She regularly worked from 8 a.m. to 9 p.m. without substantial breaks. When Ms. W would leave her employer's home for an event or social gathering, she would often receive a call from her employer requiring her to return to work immediately. In her 22 months of employment, Ms. W never received even one full day off. She was even forced to work on statutory holidays. When Ms. W did receive a "day off" it was actually only an elongated break of four to six hours before she was required to return to work. Ms. W was properly paid for her regular hours of work, but never received any compensation for overtime, including extra statutory holiday pay.

During the course of her employment, Ms. W tolerated her exploitative and abusive working conditions because she wanted to gain her permanent residence in Canada and was told by her employer that she would be deported if she left her job.

Eventually, Ms. W began asking her employer to recognize her overtime hours, but was refused. Ms. W's employer then tried to force her to sign a document stating that she did not work any overtime. Ms. W did not sign the document because she did not agree with its contents. After Ms. W refused to sign the document, she was fired without notice.

Source: West Coast Domestic Workers Association, case file.

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The first federal program for temporary foreign workers to operate in BC was the *Live-In Caregiver Program*, an immigration program whereby employers of caregivers for children and the elderly could bring foreign workers to Canada on temporary work permits for three years to reside and work in the homes of their employers. After working three years in Canada, live-in caregivers could apply for permanent residency.

Referred to as “domestic workers,” in partial recognition of the need for special employment rights and protections for this group of temporary foreign workers, the Thompson Commission report of 1994 recommended that they not be excluded from the minimum wage and hours of work provisions of the ESA. The report also recommended that employers be required to give domestic workers a contract of employment that sets out clearly the terms and conditions of employment (including duties to be performed, hour of work, and days off), that the Ministry of Labour has the authority to approve living accommodations for domestic workers required to live in private residences and the rent charged for such accommodations, and that the ESA ensures that domestic workers are not “converted” to other categories of employee for the purpose of evading the hours of work provisions of the ESA.

However, not all of these recommendations were implemented in the ESA, and the ESA is now out of date in its definition of a “domestic” as a person who “resides in the employer’s private residence” because temporary foreign worker care givers are no longer required to live in the homes of their employers. In addition, improvements to the ESA are needed in Section 14 (employment contracts), Section 15 (registration), and the hours of work regulations for “domestics.” Also, caregivers are excluded from the on-call compensation provisions and the Section 85 restrictions on workplace inspections where the ESB can only enter the premises where caregivers work with the consent of the employer.

More generally, domestic workers need more rights and protections as discussed below for all temporary foreign workers.

ALL TEMPORARY FOREIGN WORKERS

Although Canada has traditionally been a country of permanent immigration, levels of temporary migration have skyrocketed in recent years. In the early 2000s, a stream for lower-skilled occupations was added to the temporary foreign worker program (TFWP) with the intention of addressing purported labour shortages in certain sectors. Employer use of the TFWP dramatically increased, and annual entries of temporary migrants with work permits began outnumbering permanent immigrants.

The continuation and expansion of the TFWP into lower-wage sectors demonstrates that, particularly in some regions and industries, migrants are indeed filling longer-term labour needs.

The stories reported by migrant worker advocacy organizations in BC document how temporary migrant workers, particularly those in low-wage positions, are vulnerable to abuses by employers and recruiters. They have limited labour market mobility and differential access to settlement services, and pay into but are ineligible for benefits such as employment insurance. Some face unsafe work conditions and threats of deportation. Their temporary status, which is predicated on employment, is the source of much vulnerability.

The combination of high debt, low pay, precarious and temporary residency status, and tied work permits make migrant worker vulnerable to exploitation and abuse by employers and recruiters. Temporary foreign workers (TFWs) fear the very real repercussions of being fired and deported if they assert their rights or complain about poor treatment or work conditions.

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A temporary foreign worker, working in the Lower Mainland through the *Seasonal Agricultural Worker Program*, voiced this concern:

[W]e are mute because the temporary foreign workers programs are taking our voices away ... We accept insult, discrimination and everything without saying a word. If we do, the next year we won't be back to work in Canada.²⁴

Manitoba has been a national leader in ensuring the protection of migrant workers and allowing them paths to permanency. Manitoba's Worker Recruitment and Protection Act, the first of its kind in Canada, is aimed at decreasing recruitment-related fraud and abuse through increased proactive enforcement. Similar special employment standards legislation has since been enacted in Saskatchewan, Nova Scotia and Ontario.

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Despite the BC government's statements to date that TFWs have the same rights and protections as other workers in BC, and therefore there is no need for other legislation, the reality is that those rights and protections are only on paper as TFWs are not able to exercise those rights in practice. TFWs working in low wage, low skilled jobs in BC are a uniquely vulnerable workforce. They come to Canada to escape chronic unemployment and poverty in their home countries to support their families, but their contracts tie them to one employer.

TFWs receive employer-specific work permits that restrict them to working for one employer only. They are not free to simply change employers if their rights are being violated as other workers in BC are. TFWs depend on their employers not only for their jobs, but also their ability to remain in Canada. Workers are frequently threatened with deportation if they complain about their working conditions. As such, TFWs rarely file complaints against abusive employers. Uncertainty, long processing times for new Labour Market Impact Assessment and work permit applications (six to 10 months), and recruitment debt make leaving a bad boss the least desirable option. TFWs are not eligible for social assistance as others in BC are, and there are barriers for TFWs to access EI benefits.

The ESB's complaint-driven model of enforcement is detrimental to the rights of TFWs. There is an urgent need for proactive enforcement of labour standards and investigations of workplaces that employ TFWs in order to protect this vulnerable group's rights and create a disincentive for employers to violate labour standards.

Settlement services for TFWs are extremely limited and do not facilitate access to justice. There are no legal advocacy services funded by the province for TFWs to access help with filing employment standards complaints or information about their rights. This lies in contrast to provinces such as Alberta, where Temporary Foreign Worker Advisory offices and a help line have been established by the province.²⁵ When TFWs arrive in BC, they are not provided with information about labour standards, nor are they informed about any services that are available to them, including general telephone lines where they may access information. This contrasts with Ontario, for example, where employers are required by law to provide TFWs with information about their labour rights.²⁶

The establishment of a mandatory registry of employers in BC is critical to promote accountability on the part of employers. In Saskatchewan, Manitoba and Nova Scotia, for example, employers are required to register with the province, and keep records such as employment contracts and recruiter information. Stronger protections are also urgently needed for TFWs in the recruitment process. TFWs typically pay recruiters exorbitant, illegal fees for a job in BC with the result that they are indebted upon entry to Canada. They face barriers in BC when

24 Quoted in *Background: Ending exploitation of migrant workers by recruiters and employers in BC*, Rising Up Against Unjust Recruitment Coalition, December 16, 2016.

25 See: <https://work.alberta.ca/documents/Temporary-Foreign-Worker-Advisory-Office-brochure.pdf>

26 See section 11(1) of the *Ontario Employment Protection for Foreign Nationals Act, 2009*

trying to recuperate these fees, including the six-month limitation period for filing complaints with the ESB. This contrasts with the two-year limitation period in Ontario, for example.

Richard is a temporary foreign worker from the Philippines who was illegally required to pay \$15,000 to a recruiter to get a truck driving job in Surrey. When he arrived, he found he was being paid for just six hours each day, when he was actually working eight to 12 hours per day.

Source: West Coast Domestic Workers Association case file.

In Manitoba, Nova Scotia and Saskatchewan, recruiters are required to post a financial security at the time of licensing, which can be accessed by TFWs as compensation if they have paid illegal fees. Some provinces require recruiters to report information about their supply chains both inside and outside of Canada. In Saskatchewan, recruiters are liable for the actions of actors in the recruiter's supply chain. Evidently, BC lags behind other provinces in regard to preventing illegal recruitment practices.

In the recent report of the federal Standing Committee on Human Resources, Skills, and Social Development and the Status of Persons with Disabilities (HUMA) on the Temporary Foreign Worker Program, the committee "[acknowledged] that employer-specific work permits can place migrant workers in a vulnerable position with negative implications for their physical and mental well-being." The committee recommended a movement away from a complaint-driven model and toward "ensuring, through on-site inspections, that labour laws and regulations are properly enforced where migrant workers operate." Finally, the committee recognized the need for migrant workers to be informed of their rights, as well as "information on their wages, benefits, accommodations and working conditions."

Recommendations

The BC government should immediately take steps to implement the recommendations of the HUMA with regard to workers in BC in the Temporary Foreign Worker Program. Specifically, the government should enact legislation to increase the rights and protections of TFWs, following the models of Saskatchewan, Manitoba, Nova Scotia and Ontario. In particular, TFWs should have the right to recover unpaid wages going back at least three years.

It is widely recognized that fear of reprisal is a significant factor dissuading many employees from reporting violation of the ESA. This fear is real, despite the fact that Section 83 of the ESA prohibits any form of reprisal resulting from a complaint or investigation, whether by discrimination, threat, intimidation, termination of employment, or monetary or other penalty. The fear of reprisal is particularly acute and ever present for TFWs Temporary Foreign Workers because of their temporary residency status and employment contracts that tie them to a single employer.

As noted by the Ontario Changing Workplaces Review Special Advisors in their final report, both the Law Commission of Ontario and the Federal Labour Standards Review Commission have recommended that expeditious and fair processes be put in place for dealing with alleged reprisals against TFWs, and for hearing cases that could result in repatriation. This is especially critical given that the risk of repatriation is a significant deterrent to filing a complaint, and repatriation can have the effect of denying a worker any effective remedy. The Special Advisors therefore recommend that in the case of TFWs, no termination of

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employment—whether for reprisal or for other alleged reasons—should be effective unless and until a neutral adjudicator makes an order permitting such termination.

Finally, as recommended by the Changing Workplaces Review Special Advisors, the BC Ministry responsible for labour and employment standards should work with the appropriate federal agencies and ministries to develop and implement an expeditious and accessible procedure. This procedure should be available to address cases of alleged reprisals that result in termination or unjust dismissal for temporary foreign workers prior to repatriation under the terms of their work permit.

Raise the Floor

MINIMUM WAGE

MANY BC WORKERS ARE STRUGGLING to meet basic needs. More and more, decent jobs are being replaced by low-wage work. Unfortunately, the fastest growing jobs are in the service sector, where wages are the lowest. Low wages cut across all the dimensions of precarious work. A comprehensive approach to addressing precarious work must include improvements to the minimum wage and the manner in which it is set.

Section 16(1) of the ESA simply states, “An employer must pay an employee at least the minimum wage as prescribed in the regulations.” Section 15 of the Employment Standards Regulation currently states that the general minimum wage is \$10.85 per hour. However, in Sections 16, 17, and 18, there are separate minimum daily wage regulations for home support workers and live-in camp leaders, minimum monthly wage regulations for resident caretakers, minimum piece rate regulations for farm workers who hand harvest berry, fruit or vegetable crops, and a \$1.25 per hour lower minimum hourly wage for liquor servers.

There are 120,400 working people in BC earning only the minimum wage, and nearly half a million earn less than \$15 per hour. Of these lower wage earners, 81 per cent are 20 years old or older, three in five are women, and 79 per cent work for companies with more than 20 employees.

The lower minimum hourly wage regulation for liquor servers in BC was first introduced on May 1, 2011, one year after it was introduced in Ontario. Its introduction represents, in effect, an unprecedented wage subsidy to restaurant and bar owners. In addition, research has demonstrated that the lower minimum hourly wage for liquor servers reinforces sexism. Liquor servers are predominantly women, who have to depend on customers for tips, leaving them vulnerable to enduring sexual harassment and sexualized customer behaviour.

Ontario and Quebec are the only two other provinces with a lower minimum wage for liquor servers. Alberta eliminated its liquor servers’ minimum wage on October 1, 2016, and the Ontario Changing Workplaces Review Special Advisors recommend in their final report that the liquor servers’ minimum wage be phased out in Ontario. In reaching that recommendation, the Special Advisors concluded that:

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On balance our view is that this exemption [from the general minimum wage] is an anachronism. The fact that only two other provinces also have it and that one province, Alberta, recently eliminated it, is evidence that the entire idea is increasingly out of keeping with the ideas of decency of many Canadians. It is wrong in our view to pay a group of workers, especially when so many are women, a lesser minimum wage than everyone else, including others who earn tips, or who serve customers in a liquor free environment. The law is creating an institutional dependence on customers being prepared to tip, something which they currently do, but not always, and which is not mandatory. This is particularly true when the server group is disproportionately female and so there is an unintended discriminatory impact. One is left uneasy about the demographics of the sector and we question whether this anomalous treatment of liquor servers would have survived this long if most of the servers were male.

At \$10.85 per hour the current general minimum wage is only 53 per cent of the Living Wage in Metro Vancouver, and only 54 per cent of the Living Wage in the Capital Region. Even a \$15 minimum wage would still only provide 73 per cent of a Living Wage in Metro Vancouver, and 75 per cent of a Living Wage in the Capital Region. Therefore, it goes without saying that the current minimum wage in BC is driving residents into poverty and debt.

Historically, all of these separate minimum wage rates have been increased by the same amount as the general hourly minimum wage, with the exception being the hand harvester piece rates that were frozen from May 2011 to September 2015.

Currently, six provinces have a higher hourly minimum wage than BC. Although the BC minimum wage will rise to at least \$11.25 on September 15, 2017, the Alberta minimum wage will rise to \$13.60 on October 1, 2017, and then to \$15 on October 1, 2018. On May 30, the Ontario government announced that its minimum wage will increase to \$14 per hour on January 1, 2018, and then to \$15 on January 1, 2019. This announcement followed the results of a research poll showing that 70 per cent of Toronto area voters support a \$15 minimum wage.

BC's minimum wage is not only out of step with that of neighbouring Alberta, it is also at odds with the Washington state cities of Seattle and Seatac, where a \$15 minimum wage came into effect on January 1, 2017 (for small employers, the implementation date is January 2018). Further south, San Francisco's minimum wage ordinance will increase the minimum wage from \$14 in July 2017 to \$15 in July 2018. In Los Angeles County, the minimum wage ordinance will increase the minimum wage for employees of medium to large businesses (26 or more employees) from \$12 in July 2017 to \$15 in July 2020. For employees of small businesses, the minimum wage will increase from \$10.50 in July 2017 to \$15 in July 2021. Finally, in the spring of 2016, New York and California signed minimum wage increases into law, promising \$15 per hour to 10 million workers.

The majority of British Columbians live and work in Metro Vancouver and the Capital Regional District, where the cost of living is the highest in Canada. A Living Wage in 2017 in Metro Vancouver is \$20.62 per hour and in the Capital Region \$20.01 per hour—the amount that two working parents working full time and with two young children must earn to cover basic expenses. At \$10.85 per hour the current general minimum wage is only 53 per cent of the Living Wage in Metro Vancouver, and only 54 per cent of the Living Wage in the Capital Region. Even a \$15 minimum wage would still only provide 73 per cent of a Living Wage in Metro Vancouver, and 75 per cent of a Living Wage in the Capital Region. Therefore, it goes without saying that the current minimum wage in BC is driving residents into poverty and debt.

HOW THE MINIMUM WAGE IS ESTABLISHED

It is a well-documented fact that minimum wage legislation is an important policy tool for the provincial government to use in addressing poverty and income inequality. Unfortunately, the BC provincial government froze the minimum wage for 10 years. When an increase was

finally announced in 2011, it was done in an ad hoc manner. Since then, increases have been sporadic and without a consistent rationale or policy objective.

Until now, BC's minimum wage rates have been set by the political party in power on an ad hoc, discretionary basis. BC is out of step with a number of other provinces that automatically adjust their minimum wages annually on the basis of certain economic and social indicators, such as the cost of living, average weekly wages and poverty indicators. In fact, Manitoba, New Brunswick, Newfoundland, Prince Edward Island and Saskatchewan adjust their minimum wages according to recommendations by independent minimum wage boards. Other major developed countries, such as the United Kingdom and Australia, use similar systematic annual review mechanisms to ensure their minimum wages reflect current economic realities and social policy objectives. Minimum wage reviews are conducted by the Low Pay Commission in the UK, and by the Fair Work Commission in Australia. It is time for the BC government to follow suit.

Recommendations

- Effective immediately, the minimum hourly wage should be increased to \$15 per hour. The BC government should establish an independent minimum wage review commission or panel to annually review the minimum hourly, weekly and monthly wage rates. Minimum wage rates will be based on median weekly and hourly earnings in the province, average provincial GDP per capita, the provincial cost of living, Living Wage rates across the province, and the low-income cutoff for an adult and child in major metropolitan areas of BC.
- Abolish Section 18.1 of the Regulation so that liquor servers are covered by the general minimum hourly wage regulation.
- Abolish Section 18 of the Regulation so that all farm workers are covered by the general hourly minimum wage regulation.
- Employers who choose to pay incentive piece rates for certain products at certain times of the year, should ensure that farm workers can earn at least the minimum hourly wage for all hours worked.

Effective immediately, the minimum hourly wage should be increased to \$15 per hour. The BC government should establish an independent minimum wage review commission or panel to annually review the minimum hourly, weekly and monthly wage rates.

TIPS OR GRATUITIES

Keith has worked in the restaurant industry for 25 years. When he started in the industry at 14 or 15, there was no such thing as a tipping pool and auxiliary servers were paid a higher wage. When tipping pools were introduced, restaurant workers administered them. Management involvement as created an arbitrary system of tip distribution. Employees no longer have decision-making power. Typically, the tip rates are 6.25 per cent of sales, with approximately 5.5 per cent going to auxiliary servers, 3 per cent to kitchen staff, 1 per cent to management and 1 per cent to support staff. Often, 1 per cent goes into a slush fund to cover “dine and dash” incidents, breakage and/or staff parties. It has become common for restaurant owners to keep or “skim” tips given to servers. Keith’s opinion is that employers should not be allowed to administer tips. The staff should elect an employee to manage the tips, and that employee should be compensated for the task.

Pilar has worked in the restaurant industry as a server and bartender for a decade and since the age of 16. “The restaurant business needs to be looked at,” Tina said. “I am not exaggerating when I say that every single employer I have had in this industry has pulled illegal shenanigans to screw over [a]staff [who]work[s]for below the minimum wage on the liquor server minimum wage. I [am] routinely forced to pay for walk outs and other patron theft[s] because supposedly it’s the server’s fault for not being responsible, despite the washroom being located directly next to the front doors.”

The ESA needs a section dealing specifically with an employee’s exclusive right to retain all tips or gratuities received for services rendered during the course of employment. Ontario, for example, established the Protecting Employees’ Tips Act, which came into effect on June 10, 2016. This Act prohibits employers from taking any portion of an employee’s tips or other gratuities, except in limited circumstances.

The only reference to employee gratuities in the ESA is in Section 21, regarding deductions not permitted from employee’s wages:

(2) An employer must not require an employee to pay any of the employer’s business costs except as permitted by the regulations.

(3) Money required to be paid contrary to subsection (2) is deemed to be wages, whether or not the money is paid out of an employee’s gratuities, and this act applies to the recovery of those wages.

Therefore, the ESA needs a section dealing specifically with an employee’s exclusive right to retain all tips or gratuities received for services rendered during the course of employment. Ontario, for example, established the Protecting Employees’ Tips Act, which came into effect on June 10, 2016. This Act prohibits employers from taking any portion of an employee’s tips or other gratuities, except in limited circumstances.

Recommendation

A new section under Part 3 of the ESA, copied from the Newfoundland & Labrador Labour Standards Act, should read as follows:

Tips or Gratuities

(1) Tips or gratuities are the property of the employee to whom or for whom they are given.

(2) An employee shall not be required to share a tip with an employer, a manager or supervisor of the employer or an employer’s representative.

(3) Where a surcharge or other charge is paid instead of a tip or gratuity, the amount paid shall be considered a tip or gratuity for the purpose of subsection (1).

(4) Where a surcharge or other charge is paid instead of a tip or gratuity, or where the amount of the tip or gratuity is itemized on the record of a credit card or debit card payment, the employer may deduct an amount required to be deducted from income by an Act of the province or of Canada from the amount due the employee.

EQUAL PAY AND BENEFITS FOR PART-TIME, TEMPORARY, CASUAL, SEASONAL AND CONTRACT EMPLOYEES

In BC, it is frequently the case that part-time, temporary, casual, seasonal and term contract employees do not receive the same pay rates and benefits as full-time employees of the same employer and for the same work (unless these employees are covered by a union collective agreement). This is yet another example of discrimination against precarious employees.

In their final report, the Ontario Changing Workplaces Review Special Advisors considered whether the ESA should require part-time workers to be paid the same as comparable full-time workers. The Special Advisors concluded that part-time, temporary, casual, seasonal and contract employees should be paid the same rates as comparable full-time employees. The government of Ontario has since adopted the Special Advisors' recommendation and announced its intention to mandate equal pay for part-time, temporary, casual and seasonal employees doing the same job as full-time employees. Temp agency employees will also receive the same pay rates as permanent employees who work at the agencies' client companies.

Recommendation

There should be no differential treatment in pay, benefits or other working conditions between full-time regular employees and workers who are classified as part-time, temporary, casual, seasonal or term contract.

MEAL AND REFRESHMENT BREAKS

A number of workers reported being denied adequate meal and refreshment breaks during their shifts, or that they were frequently required to work through their meal breaks without pay. Failure to provide meal breaks constitutes another form of wage theft, as Section 32 of the ESA requires employers to provide their employees with one 30-minute unpaid meal break after five hours of work. However, there is no provision for employees to be given a paid refreshment break during each half-shift—a benefit most unionized workers enjoy.

Recommendation

Provide workers with two paid 15-minute refreshment breaks and one unpaid half-hour meal break (per eight-hour shift). This will help encourage a safe and productive work environment.

STATUTORY HOLIDAYS

ESA Section 1—Definition of Statutory Holiday

Ten statutory holidays are listed in the ESA:

- New Year's Day
- Family Day
- Good Friday
- Victoria Day
- Canada Day
- British Columbia Day

The government of Ontario has adopted the Changing Workplaces Review Special Advisors' recommendation and announced its intention to mandate equal pay for part-time, temporary, casual and seasonal employees doing the same job as full-time employees. Temp agency employees will also receive the same pay rates as permanent employees who work at the agencies' client companies.

- Labour Day
- Thanksgiving Day
- Remembrance Day
- Christmas Day

Other statutory holidays federally and/or provincially are:

- Easter Monday
- National Aboriginal Day (June 21 - Northwest Territories)
- Boxing Day

Recommendation

The above three public holidays should be added to the statutory holiday list in the ESA so that all employees, regardless of status and seniority, will be entitled to a total of 13 paid holidays in each year.

ENTITLEMENT TO STATUTORY HOLIDAY

In order to be entitled to statutory holiday pay in BC, a worker must be employed for 30 calendar days, and have worked or earned wages for 15 of the 30 calendar days preceding the statutory holiday. These restrictions are another example of how precariously employed workers are denied the basic benefits that other employees are entitled to. Under the previous Saskatchewan Labour Standards Act²⁷ (Part VI, Sections 38, 39 and 40), however, there was no qualifying period for employees to be entitled to statutory holiday pay.

Recommendation

- Delete Section 44 from the BC ESA so that every employee is entitled to statutory holidays with pay.

STATUTORY HOLIDAY PAY

Currently the calculation of pay for a day off work on a statutory holiday, or for a day off instead of statutory holiday, is based on the Section 44 restriction of entitlement.

Recommendation

- Replace Section 45(1) of the BC ESA with the following, from Section 39(1) of the previous Saskatchewan Labour Standards Act:

The minimum sum of money to be paid for a statutory holiday or for another day designated for observance of the statutory holiday by an employer to any employee who does not work on that day shall be:

(a) where the employer pays to the employee the employee's regular wages for the period that includes that day, is equal to those wages;

²⁷ The Saskatchewan Labour Standards Act was replaced by new legislation in 2013.

(b) in any other case, the amount A calculated in accordance with the following formula:

$$A=W/20$$

where W is the total of the wages earned by the employee during the four weeks immediately preceding the statutory holiday, exclusion of overtime.

Amend Section 45(2) so as to be consistent with deletion of Section 44 and replacement Section 45(1), as follows:

The statutory holiday pay provided for under subsection (1) applies whether or not the statutory holiday falls on the employee's regularly scheduled day off.

Repealed Sections 47 & 49

Up until the 2002 amendments to the BC ESA, Section 47 required that if a statutory holiday fell on a non-working day for an employee, the employer must give the employee one work-day off with pay.

Recommendation

- The Section 47 provisions (prior to the 2002 amendments) should be written back into the ESA.

Up until the 2002 amendments, Section 49 required that the standards for employees covered by a collective agreement must meet or exceed the statutory holiday provisions of the ESA.

Recommendation

- The Section 49 provisions (prior to the 2002 amendments) should be written back into the ESA.

ANNUAL VACATION

Under the ESA, an employer must give an employee an annual vacation of at least two weeks after 12 consecutive months of employment, and at least three weeks after five consecutive years of employment. Unfortunately, many low-wage workers in precarious positions are only able to take unpaid vacations. Others may receive two weeks of annual paid vacation, but that is all they will ever see in their working lives.

Most major industrialized countries (e.g., Sweden, Germany, the United Kingdom and others) have legislation giving workers the right to at least four weeks of paid vacation. The International Labour Organization recommends that the period of paid vacation should not be less than three weeks. Saskatchewan provides three weeks of paid vacation after one year of service, and four weeks after nine years. European countries average more than five weeks of annual paid vacation.

Recommendation

Increase paid vacation entitlement to three weeks per year for the first five years, and to four weeks after five years of service.

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PAID SICK LEAVE

According to the Toronto Workers' Action Centre submission to the Ontario Changing Workplaces Review, Canada and the US are almost alone among developed countries in their failure to require employers to provide paid sick days. At least 145 countries provide paid sick leave for short or long-term illness

The BC ESA contains no provision for the right of an employee to sick leave (paid or unpaid). Section 52 (Family Responsibility Leave) contains a provision for up to five days of unpaid leave during each year to meet family responsibilities. Section 52.1 (Compassionate Care Leave) contains provisions for up to eight weeks of unpaid leave to provide care or support to a family member if a doctor or nurse practitioner issues a certificate stating that a family member has a serious medical condition with a significant risk of death within 26 weeks.

According to the Toronto Workers' Action Centre submission to the Ontario Changing Workplaces Review, Canada and the US are almost alone among developed countries in their failure to require employers to provide paid sick days. At least 145 countries provide paid sick leave for short or long-term illness. According to their research, many high-income economies require employers to provide upwards of ten paid sick days. In the US, this is changing, with four states and 15 cities having recently adopted guaranteed paid sick days. Washington is the most recent state to adopt this guarantee. A majority of the state's voters supported an amendment to Washington's Fair Labour Standards Act, which requires every employer to provide up to 40 hours of paid sick leave per year.

Recommendations

- All employees shall accrue a minimum of one hour of paid sick time for every 35 hours worked. Employees will not accrue more than 52 hours of paid sick time in a calendar year, unless the employer selects a higher limit. For a full-time 35-hour per week employee, this works out to approximately seven paid sick days per year. Up to 52 hours of unused paid sick leave may be carried over for use in the year following the year of accrual.
- Employers shall be prohibited from requiring evidence of sick leave absences up to 52 hours. Employers must not terminate an employee because of their sick leave, or change a condition of employment without that employee's written consent.

Complaints & Enforcement

Bianca was a manager in the kitchen operated by Compass Canada at Hudson's Bay. Her employer was not paying her for all the hours she worked, nor were they paying her overtime pay. She raised the issue many times with her employer but was told not to worry and that she would be looked after. Bianca finally quit and filed a complaint with ESB. She was required to participate by phone in a mediation with her employer and an ESB officer. Bianca's employer kept giving "low ball" offers to try to get her to settle. When she did not accept any of the offers, the officer told her she should settle and stop wasting everyone's time. Bianca refused to settle and a hearing was scheduled.

The employer did not show up for the first hearing date. At the second hearing, the employer did not bring the paperwork they had been asked to bring. During the proceedings, the officer treated Bianca with disrespect. He often turned his back on her, and referred to her, when speaking with the employer, as "she" and "her," but never by name. The officer got into arguments with the complainant. She was finally pressured into settling for less than what was owed to her. It took months to reach this settlement. "After the hearing I went outside and cried," said Bianca. "I was so intimidated and furious and disappointed with how I was treated."

"I would tell people not to bother filing an employment standards complaint unless they have a lawyer," said Bianca, when asked for advice to give other workers. "They will just end up frustrated and even more angry. The system is not made for solving violations. The self-help kit is designed to intimidate people and it is difficult to understand."

Some of the most significant changes made to the ESA since 2001 involve the rights of employees to file complaints, and how complaints and investigations are handled by the director of the ESB and his/her staff.

SOME OF THE MOST SIGNIFICANT CHANGES MADE TO THE ESA since 2001 involve the rights of employees to file complaints, and how complaints and investigations are handled by the director of the ESB and his/her staff.

Previously, the director was required to investigate every complaint received. After the 2001 ESA revisions, the director was required only to "accept and review" complaints, and no longer required to investigate every complaint. But a complaint does not have to be accepted or reviewed if "the employee has not taken the requisite steps specified by the director in order to facilitate resolution or investigation of the complaint."

It has become abundantly clear from the stories received from workers and workers' advocates that the "self-help kit" first step in the filing of a complaint is a deterrent to many employees initiating legitimate ESA violation complaints

These changes established the legal framework for the ESB to adopt inadequate administrative policies and procedures.

- Employees are first required to bring their complaint to their employer, with the aid of a "self-help kit," before being permitted to file a written complaint with the ESB.
- Active "investigation" of complaints by an ESB officer has been replaced with a new "mediation" process to try to obtain a new form of "settlement agreement."
- There is a new "adjudication" role for officers in the event that a "settlement agreement" cannot be reached, where officers convene formal hearings—most often via telephone conference—to receive the evidence of both parties, and then issue written decisions.
- Proactive enforcement through individual employer and sectoral audits and unannounced inspections has been abandoned.

It has become abundantly clear from the stories received from workers and workers' advocates that the "self-help kit" first step in the filing of a complaint is a deterrent to many employees initiating legitimate ESA violation complaints. In Ontario, the government amended the employment standards complaints process in 2010 to also require complainants to go through a similar "self-help" step before filing a formal complaint. Research commissioned by the Changing Workplaces Review Special Advisors concluded that "the balance of evidence suggests that the decline in complaints [since 2010] corresponds to the introduction of the OBA [the self-help provision], the requirements of which may be dissuading workers from pursuing their rights." On the basis of this and other evidence, the Special Advisors concluded in their recent final report that "the requirement that an employee report alleged violations first to his employer has a negative impact on reporting and on compliance and amounts to a barrier in accessing justice to the most vulnerable employees." Their recommendation is to remove the "self-help" requirement from the complaints process.

Without proactive enforcement and adequate staff resources to provide effective enforcement, employment standards are, for all practical purposes, meaningless. Radical reductions in staffing resources since 2001 have had a significant impact on the ability of the ES Branch to effectively administer and enforce the minimum requirements of the ESA.

Prior to the changes in BC 15 years ago, the resolution of disputes between employers and employees had often been through a settlement informally mediated by ESB officers. Officers were cautious in the use of mediated settlements because of their potential to become a means to undermine the ESA. After all, most employees acted on their own without counsel or representation, whereas employers were often accompanied by legal counsel and exerted their greater power. And although not clearly defined, the current "settlement agreements," resulting from the more formalized "mediation" process, are given special status in the ESA. Once signed by the complaining employees and their employers, settlement agreements take the place of a director's determination. If an employer does not comply with the settlement agreement, the affected employee cannot then ask the ESB to issue a violation determination to force compliance with the ESA in full. Only the settlement agreement is enforceable in the court.

Because of imbalances in the power relationship between employees and their employers, the post-2001 administrative changes to enforcement outlined above have effectively placed employees in a more vulnerable position. Today, they receive less protection than was previously the case.

Without proactive enforcement and adequate staff resources to provide effective enforcement, employment standards are, for all practical purposes, meaningless. Radical reductions in staffing resources since 2001 have had a significant impact on the ability of the ES Branch to effectively administer and enforce the minimum requirements of the ESA.

Even when workers' advocates have requested that the director investigate and audit an employer known to be systematically violating the ESA, the director has refused to do so.

Since 2000/2001, the number of branch offices has been reduced from 17 to 9 (a 47 per cent reduction), and the total number of branch staff has been reduced from 148 to 74 (a 50 per cent reduction). At the same time, total employment in BC has increased by 23 per cent, and the number of establishments with employees has increased by 25 per cent. Consequently, there are significantly fewer enforcement staff members able to enforce ESA complaints and violations on behalf of a significantly larger work force. This constitutes an abdication of responsibility.

Table 2. BC Employment Standards Branch Enforcement Staffing Resources, 2000-2016

	2000**	2001	2002	2003	2016	% change, 2000 to 2016
Staffing—FTE						
Total Branch	162	151	125	116	74	-54.3
S.D.& F.W.C.P.*	14	n.a.				
Net Total	148	151	125	116	74	-50.0
Branch Offices						
Vancouver & Fraser Valley	5	5	2	2	2	-60.0
Vancouver Island	4	4	2	2	2	-50.0
Thompson - Okanagan	3	3	1	1	1	-66.7
Kootenay - Boundary	2	2	1	1	1	-50.0
North East	1	1	1	1	1	0.0
North Central	1	1	1	1	1	0.0
North West	1	1	1	1	1	0.0
Total Offices	17	17	9	9	9	-47.1
Total BC Employment	1,930,000	1,920,900	1,952,400	1,998,100	2,379,500	23.3
Total Establishments	157,371	157,421	157,652	158,470	195,980	24.5

* Skills Development & Fair Wage Compliance Program

** Pre-New Era base fiscal year.

Sources: BC Ministry of Skills Development and Labour Annual Reports and Annual Service Plan Reports; BC Stats Employment by Industry for BC, Development Region and Metro Areas and Establishment Counts by Employee Size. Accessed April 2017 at: <http://www2.gov.bc.ca/gov/content/data/statistics/employment-labour/labour-market-statistics> and <http://www2.gov.bc.ca/gov/content/data/statistics/business-industry-trade/number-of-businesses-and-employment-by-industry>.

According to stories received from workers and workers' advocates, workers who have submitted ESA complaints and been through the process of mediation and adjudication have largely found the experience difficult, intimidating, unfair, and often disrespectful or abusive. Furthermore, for those with little or no English, there is no translation service provided for participation in mediation and adjudication hearing procedures. Workers who have submitted complaints tend to be extremely reluctant to go through the process ever again.

Recommendations

Implement a proactive system of enforcement to increase compliance through the use of multi-authority compliance teams in abusive employment sectors, such as agriculture, construction, personal services, hospitality, retail, restaurant, agency employment, and couriers. Conduct sector and geographic audits of employers in these sectors.

- Implement a deterrence model of enforcement that compels employers to comply with the ESA.
- Implement a proactive system of enforcement to increase compliance through the use of multi-authority compliance teams in abusive employment sectors, such as agriculture, construction, personal services, hospitality, retail, restaurant, agency employment, and couriers. Conduct sector and geographic audits of employers in these sectors.
- Increase staffing to the dedicated enforcement team in order to implement proactive inspections.
- Restore offices in remote areas and relocate the Lower Mainland office to a central location near public transit.
- Strategically target emerging employer practices, such as misclassification of employees as independent contractors or failure to pay overtime, for proactive sectoral inspection blitzes.
- Hold companies in low-wage sectors responsible, under a duty-based regime, for subcontractors' violations of ESA wages and working conditions.
- Create a reverse onus so that employers have to disprove a complaint against them, rather than workers having to prove that a violation occurred.
- Establish workers advisory offices and provide legal assistance to workers to make employment standards claims.
- Eliminate the self-help kit process that requires workers to first attempt to enforce their rights with their employer before they are allowed to submit a complaint.
- Fund interpreters for the claims and adjudication process to ensure access for employees and employers who do not speak English.
- Eliminate the forced/compulsory mediation process so that participation in mediation is voluntary.
- Change the Section 78(4) provisions on the supremacy of mediated settlement agreements so that the failure of an employer to comply with the terms of a settlement agreement results in the director issuing a violation determination to force compliance with the ESA in full.
- As a matter of course, have the ESB publicize the names of all employers found in violation of the ESA to the ESB website.
- Establish a formal anonymous and third-party complaint system.
- Provide funding to non-profit advocacy organizations, so they can regularly provide information and support to workers who require assistance filing ESA complaints.

Conclusion

THE BC EMPLOYMENT STANDARDS COALITION'S OBJECTIVE in publishing this report is to give a voice to the many workers who face abuse or exploitation, and are unable to exercise their right to decency and fairness in the workplace.

This report is the culmination of an investigative project that began in the fall of 2016. The aim of the project was to document and analyze workers' stories of abuse and exploitation in the workplace, and the failure of BC's outdated employment standards laws and system of enforcement to ensure fairness and decency in the workplace. The findings and recommendations in this report come from the 145 workers' stories collected by the coalition, and are supplemented by additional stories, previously published research reports, and case files from workers' organizations.

The purpose of this report is to bring the inadequacies of the current minimum standards of employment in BC into public view, and to persuade both the BC Law Institute and the next provincial government that the Employment Standards Act needs significant reforms. A new culture of employment standards compliance and enforcement will ensure that BC workers are guaranteed the decent working conditions needed to survive and thrive in this province.

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Additional Workers' Story Summaries

WAGE THEFT STORIES

Sonia was a retail clerk working the afternoon shift, she did not get a break during the last 7 hours of her 8 1/2 hour shift.

Drew, a server for a large restaurant chain, does not receive a break after 5 hours of work, his clock-out time was changed by management so that his pay did not reflect hours actually worked, and servers have to share their tips with kitchen staff according to a fixed percentage dictated by management.

Colin is a residential child care worker in a group home with 20 years experience. The shifts can be 8, 24, 48 or 72 hours. Those working 24 – 48 hour shifts have to be on standby at all times, but there is no overtime pay.

Kim worked as an Administration Assistant at a community college, no overtime was paid and there was deduction from her pay when she was off sick. She also works 40 hours per week for a tech company that took issue with her when she took lunch breaks and gave no paid breaks during her 8 hours shifts.

Susan is a Certified Dental Hygienist working part time hours for two different employers. She does not get paid for statutory holidays or overtime pay. She believes that her employer does the scheduling strategically to avoid paying statutory holiday pay as she is scheduled for less than 15 days out of 30, making her ineligible. She is also paid straight time for overtime work. Schedules are sometime changed without notice.

Susan is aware the ESB complaint process, but views confronting her employer with these issues as a “scary process”.

Larry is on a work permit and employed as an assistant to a Notary Public. His employer did not disclose his rate of pay before he started work. At the beginning he was working full time for \$13 per hour, but then his pay was cut to \$12 per hour because, he was told, he was underperforming. Also he did not get access to breaks.

Carla was hired into a professional position with a local government under a temporary contract. She has a Master's Degree and 7 years of experience in her profession. Forty percent of the staff were on temporary contracts. They were not paid overtime, did not have breaks, and worked long hours to try to get their contracts extended. The employer characteristically extended employment contracts for 6 months, year after year.

Veronica was a communication manager for an events company. In order to obtain a promotion to this position she had to sign an agreement giving up overtime pay. She worked more than 12 hours a day and as many as 15 hours on Saturdays. Her colleagues were also treated poorly and not paid overtime pay. Before being promoted she was told: "You can't really get ahead working 9 to 5".

Joan is a receptionist, employed with the same employer for 17 years. She complained that her vacation pay is not accruing on the basis of her total earnings, and that this has been going on for 8 years.

Karen is a digital animation artist who has worked in the industry for four years. On one project she was required to 10 to 12 hour days. She was given food instead of straight time pay for the extra hours. Her unpaid overtime averaged 10 hours a week. She said it is hard to have work life balance working in the industry, and you get blacklisted if you stand up for your rights. There is no job security since you are working from contract to contract.

Maureen is a post secondary teaching instructor on temporary contract at Emily Carr. The job requires a lot of work to prepare for classes but she is not paid for preparation time, only classroom time, and therefore ends up earning less than minimum wage.

Theo was a millworker working for a Coquitlam company. When he found out that the company was not paying overtime pay correctly he approached his boss about how no one was being paid overtime pay but were receiving a bonus in their pay cheques instead. The boss became angry and told Theo that he did not need to work for the company anymore— that he was fired.

Vera is a work leader and time keeper for a large landscaping company. She has been instructed not to pay overtime to her crews for work in excess of 8 hours per day or 40 hours per week because the industry standard is not to pay overtime premium pay. She was told to only pay volunteered overtime at straight time pay. She wanted to tell this story because employers in this industry are unfair to their workers who are essentially doing hard construction work.

Adele works as an agent for an insurance company. She is paid for 35 hours per week, however, they do not pay overtime, ever. They make employees bank overtime hours for paid days off. Employees are expected to stay late without pay if they get stuck with a client, and they are frequently called to serve a client during their lunch breaks, and that time is added to their banked hours. Said Adele: "I know there are worse companies out there, but there really needs to be something written in labour law that states full time is 40 hours and to get rid of the unpaid lunchtime loopholes. It's hurting employees and only increasing profits for companies."

Leah was hired for a job that paid \$11.25 an hour, however, when she received her first pay cheque she found out that she was only being paid \$10.50 an hour.

Mary e-mailed from Northern BC: “Too bad your discussions [story forums] weren’t occurring in the northern part of BC. I am 58 years old and have had to go back to work, and landed two jobs at once, after social services basically refused to help me meet my rental obligations since my paydays were both occurring too late to meet them and I had no food in the fridge.”

“One employer hired me for two weeks, then let me go without notice of clear reason. Then I had to threaten them with a small claim court lawsuit because they failed to pay me my final paycheque within the prescribed 48 hours after the last hour worked.”

“The other employer, Bob the Janitor, refuses to hire a spare worker to enable us three regulars to have days off, ... we are being forced to work 7 nights a week, including stats, under threat of losing our jobs outright. I have not had a day off now for 2 months and I am exhausted, but I cannot afford to lose the job because Social Assistance has become nearly impossible to qualify for in BC.”

“Furthermore, this employer only pays his workers once a MONTH, and its nearly in the middle, on the 10th of every month.”

“There is no real recourse with the Labour Standards Branch either, You have to download the do it yourself kit now, and do all the footwork, and maybe—MAYBE—something will be done in 15 days. So its small claims court, which can cost a plaintiff \$100+ in court fees, which MIGHT be waived if you can prove you can’t afford it—more footwork when you’re too broke to buy food, let alone rent.”

Tricia phoned from Victoria, she is a commercial painter. She worked for Kroma Painting for one month, she received 3 pay cheques, the first of which bounced, and she was owed \$242 for the last few days she worked before she was fired. She needed to be paid so that she could pay her rent. Ownership of the company had changed so she phoned the previous owner about the pay owed but could not make contact and did not get a call back.

Karen was an English language instructor employed by a private language school. She worked two days a week but was not paid for preparation time—a common practice in the industry—where preparation can involve as much time as teaching time. She could be called in for 2 hours of instruction time without pay for preparation time. She would be called for meetings but not get paid for attending. When she taught composition she was not paid for reviewing or correcting written assignments and for providing follow-up explanation.

Lee worked for a guttering installing company for 6 months. He was laid off after requesting a raise in pay. He had not been paid for overtime worked—he was owed \$200 in overtime pay. He completed the ESB self-help kit but received an angry negative e-mail response from the employer who said he had been overpaid. So he filed an Employment Standards complaint and the ESB asked him if he wanted to also complain about severance pay not received, so he claimed \$1,500.

Then he received a call from an Employment Standards officer who yelled at him that he did not have a case even though the officer had not read the complaint. He contacted Mary Walsh a supervisor of ESB officers and then was treated better. He was advised to take a \$500 settlement.

TERMINATION OF EMPLOYMENT STORIES

Amy worked for a teacher placement agency for 11½ years. One day, without notice, she was fired—two days before annual bonuses were to be paid out. She received a letter saying she could not say anything negative about the company and that she could not use anyone in the company as a reference. The employer told other staff members that her boyfriend was hacking the company's website.

Lolita is a domestic worker/live-in caregiver. She became so stressed from having to work from 7 in the morning to 4 in the afternoon, 6 days every week, with no breaks or vacations, that she ended up in hospital. When the hospital doctor said that she could go home her employer said she could not, and fired her. She had nowhere to go and had to ask friends if she could stay with them.

Travis was fired from his restaurant job via e-mail. He had not been written up for discipline. The employer sent him a letter citing multiple customer complaints, but the employer never communicated them to him. The employer did not terminate him for just cause and did not give notice of termination, therefore the employer owes him one week's pay.

Sally was a teacher at a private school. Things had been great, she had great performance evaluations. Then she was terminated in the middle of the school year after she had worked there 5 months. There was no notice of termination.

Theo was a millworker working for a Coquitlam company. When he found out that the company was not paying overtime pay correctly he approached his boss about how no one was being paid overtime pay but was receiving a bonus in their pay cheque instead. The boss became angry and told Theo that he did not need to work for the company anymore— that he was fired.

Phyllis was recently hired as a supervisor at Lonsdale Quay by Marquise Facilities. "Everything was going great, I was told I was doing a super job until I sent the property administrator and e-mail saying that if one of the guys on their maintenance crew didn't stop harassing me I would report him to the ESB. I was still in my probationary period and the next day I was dismissed without reason."

Tina had worked for a property management company for 8 years. She became sick with a serious throat infection. She took one week of sick leave, then had to take more sick leave. When she returned to work she was terminated. She was told her position no longer existed through restructuring. There had been no warning. The employer said she would receive 2 months' severance pay but it would be paid over the next 2 months as if she were still employed.

Rose had worked for a church supply company for 15 years. She was terminated without notice or reason after complaining to her employer about a co-worker who was behaving violently and using abusive language in the workplace.

Ms. W is a temporary foreign worker live-in caregiver. During the course of her employment with a family she tolerated exploitative and abusive working conditions because she wanted to gain her permanent residency in Canada and was told by her employer that she would be deported if she left her job. Eventually she began asking her employer to recognize her overtime hours, but was refused. Ms. W's employer then tried to force her to sign a document stating that she did not work any overtime. After Ms. W refused to sign the document she was fired without notice.

CHILD LABOUR STORIES

Tristan worked in a warehouse unloading containers at the age of 16. He was hit by falling objects resulting in a back injury. There was no safety training at his job. He visited a doctor and was given a Workers Compensation Board claim number, but he never filed the paper work. He was given one day off from work as a result of the injury, and was on heavy painkillers prescribed by his doctor. He was eventually fired for not working fast enough. He is still in pain from this injury nearly a year later.

Melody is 15 and self-supporting. Her supervisor at her restaurant job subjects her to regular sexual harassment. She knows her workplace is unsafe for her, but she feels she can't quit until she finds another job, because she has to have income for her rent and food.

Katie burned all her fingers at once on a grill. The fingers blistered, but she was told by her employer not to leave to go to the doctor. She also fell down a flight of stairs while moving heavy boxes, and on another occasion slipped and fell on a wet floor.

Soraya started working in an office job at age 14 to earn money to get braces. Her parents did not give permission for her to start the job. She was sometimes sent home early and not paid for the minimum call out time. The company went out of business and she was not paid \$250 in wages owed to her, and she was never paid overtime rates when she earned them.

Damian worked in a number of different jobs when he was a teen, including manufacturing and rubbish removal. He often did work that he felt was unsafe, including throwing heavy cinder blocks off of a roof without safety gear, and standing on planter boxes several stories up without fall protection. He had to clear a jammed machine that had caused facial burns and the loss of a fingertip to co-workers, but was not allowed to turn the machine off when it became jammed. Damian and his co-workers worked with a forklift that they were made to load beyond its capacity, and had to stack pallets all the way to the ceiling. Fourteen- and 15-year -old coworkers were also driving the forklift without proper training. Damian also worked alone sweeping wood chips into a pit—which he could have fallen into without anyone knowing. His boss told him not to fall in or he'd be dead. The building had no fire exits or sprinklers. His hands were burned, even though he wore heat resistant gloves. The factory later burned down.

FARM WORKERS STORIES

“Officially in Mexico we only pay for the visa application but in reality we need to pay under the table thousands of dollars to the director of the program in the federal office. If you want a farm where the living and working conditions are good, you have to pay \$1,000 to \$2,000. If you want a place where you will do a lot of hours you must pay more.”

-SAWP worker, testimony, Fraser Valley, 9 August 2015. Quoted in MWDA report “Beyond Our Plates”.

“We were told that we will work at least 40 hours a week but this year, during 3 months we worked only 10 hours in two days. We don’t even have enough money to pay our basic expenses.”

-Guatemalan Temporary Foreign Workers, testimonies, Kelowna and Fraser Valley area, 26 August 2015. Quoted in MWDA report “Beyond Our Plates”.

“The vulnerability of farm workers is so huge that they will never speak about that because it jeopardizes not only their job, but their life too.”

-Bayron Cruz (Sanctuary Health). Quoted in MWDA report “Beyond Our Plates”.

“We have learned not to talk, not to complain, not to experience emotions, or we will get sent back.”

-Jamaican SAWP worker, testimony, Kelowna, 11 September 2015. Quoted in MWDA report “Beyond Our Plates”.

MIGRANT WORKER STORIES

Ms. P came to Canada as a temporary foreign worker after securing employment as a Live-in caregiver. Ms. P signed a contract stating that she would be caring for one elderly person and performing light household tasks. The contract stated that she would work 40 hours per week, with weekends off. Instead, Ms. P was grossly overworked. Ms. P was required to take care of two and not one, and was sometimes required to take care of her employer's grandson and the family dog. Ms. P worked 13-15 hours/day, 7 days/week. Throughout the course of her 22 months of employment, Ms. P did not receive a single day off.

Ms. P's care giving tasks involved providing massages, manicures, and pedicures, preparing meals, washing dishes, cleaning the entire home, and doing laundry for the family (often by hand). Ms. P was also required to do outdoor duties like raking leaves and gardening.

Ms. P never received direct wages. Instead, her employers sent money directly home to her family in the Philippines. Therefore, Ms. P never had access to finances and wasn't able to leave her exploitative situation. Furthermore, the money that was sent home to her family was tremendously insufficient with payments ranging from approximately \$500 - \$800 per month.

Ms. P reluctantly agreed to the extended work schedule because she was not aware of her rights as a worker. She was also afraid about her immigration status in Canada and feared that her employers could terminate her and send her out of the country. Any time that Ms. P tried to address her working conditions with her employer, the employer would get very angry. At one point Ms. P attempted to end her employment with by providing a written notice of termination, but her employer refused to accept it. As a foreign worker, Ms. P was not aware that in Canada she did not need the agreement of her employer to leave the position. Ms. P had been kept very isolated throughout her period of employment with no days off to meet other people and no funds to leave.

Source: West Coast Domestic Workers Association, case file.

Ms. B came to Canada as a temporary foreign worker after securing employment as a Live-in caregiver. She worked as a full-time live-in caregiver, providing child care for Ms. H's infant child as well as house-cleaning duties, for about 7 months. Ms. B's employment contract stipulated that she would only work 35-40 hours per week and that she would have weekends off. Instead, Ms. B was extremely overworked, having to work around 80 hours per week, including Saturdays and Sundays. She was provided a schedule of necessary tasks by her employer that only provided one day off every four weeks.

Ms. B's was severely underpaid. She was only provided wages for a 40 hour work rate at a wage below minimum wage. Her employers never accounted for the countless overtime hours that she put in or the fact that she was required to work on several statutory holidays.

In addition to her inadequate pay, Ms B reported that her employer was often angry and verbally aggressive towards her. Ms. B did not receive proper breaks and usually had to eat when the infant she was taking care of ate.

Source: West Coast Domestic Workers Association, case file.

Doniea is a migrant worker. He worked for Certa Pro Painters in the Fraser Valley. He submitted a complaint to the ESB for non-payment of \$1,800 in wages by Certa Pro Painters.

His issue is the way in which the ESB handled his complaint and tried to pressure him during mediation to settle for less than the \$1,800 he was claiming he was entitled to.

During mediation at the Langley Office of the ESB the company offered to pay Daniea \$500 to settle the complaint. The mediation officer told him that this was the best he could expect to receive because

he was not a resident of Canada. When Doniea threatened to leave and complain to the ESB about this threat his claim was settled for \$1,800.

Source: Story told by worker at a Workers' Story Forum

Lolita is a domestic worker, she starts working at 7 am, and works until 1 in the morning, especially in the summer. But she has a contract that says her work day starts at 7 and ends at 4 pm. She does cleaning in addition to providing care giving. She gets no breaks and no vacations. She has never taken sick leave. She has only Saturdays off, is paid minimum wage, but receives her pay only once a month.

Last month she was so stressed she was in the hospital. She is supporting her Mom through this work. She feels alone and has tried to hurt herself. When she was in the hospital the doctor said she could go home, but the Employer said no, she couldn't go home and fired here. She has nowhere to stay. She called her friends and asked to stay with them.

When she was fired she received no notice; there was no accommodation for the short leave.

Source: Story told by worker at a Workers' Story Forum



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