

Submission to the Standing Committee on Finance
and Economic Affairs

On

Bill 148 (2017), An Act to amend the Employment
Standards Act, 2000 and the Labour Relations Act,
1995

**OCASI – ONTARIO COUNCIL OF AGENCIES
SERVING IMMIGRANTS**

July, 2017

INTRODUCTION

OCASI – Ontario Council of Agencies Serving Immigrants is the umbrella organization for the Ontario immigrant and refugee-serving sector. The Council was founded in 1978 and now has more than 200 member agencies across the province that work with immigrants, refugees and migrant workers. OCASI member agencies assist clients to find jobs, and deal with workplace problems by providing information and referrals.

OCASI welcomes Bill 148 and its potential to strengthen existing protections for immigrant, refugee and migrant workers as well as all other Ontario workers who are disadvantaged and excluded from basic protections.

BACKGROUND

OCASI's 2012 study, 'Making Ontario Home', based on a province-wide survey of over 2,500 immigrants and supplemented by qualitative data from selected groups of immigrants, found that employment was the number one concern for the majority of the survey participants. More specifically, their biggest challenge was to find a job in their field, and one that is consistent with their education, training and experience.

We have heard from frontline immigrant settlement workers that a significant proportion of their clients find their first job in Canada through a temp agency. The jobs are typically in the local labour market including in food services, hospitality, retail, janitorial, warehousing, health services, social services and sometimes in financial services. While some jobs may lead to permanent employment, most don't and many jobs are precarious. Many immigrants are working in these types of employment situations for years because they cannot find stable, full-time and long-term employment - in any field, let alone their own.

The over-representation of immigrants and refugees as well as racialized and women workers in low-paid, precarious employment is also extensively documented in quantitative reports and qualitative research. They are far more likely to work in low-paying jobs with fewer guarantees of paid leave, an unpredictable work schedule, and with less likelihood of union membership.¹ They are over-represented in minimum wage work, and often are paid even less.

Ontario, as well as the rest of Canada will continue to rely on immigration for population growth for the foreseeable future. Given immigration trends and early reports from the federal government's new immigrant selection platform, a significant proportion of future immigrants will be racialized – which is a continuation of existing patterns.

Most workers of immigrant background who are already in Ontario, and those who will arrive in the future will be relying primarily on the Employment Standards Act for the minimum standards that will govern their employment conditions.

¹ Block, Sheila. "A Higher Standard: The case for holding low-wage employers in Ontario to a higher standard" (2015). Canadian Centre for Policy Alternatives.

Immigrant, refugee and migrant workers are vulnerable to exploitation by employers, employment agencies and recruiters. They often face difficulty in knowing their rights are workers, understanding how they may be accessed and fear of reprisal (including the real possibility for migrant workers of being fired and facing deportation). Racialized workers are at greater disadvantage, having to consistently face systemic racism in hiring and retention, as well as accessing even the minimum rights granted under the Employment Standards Act. The intersection of race, gender, sexual orientation and gender identity, disability, immigration status as well as factors such language and literacy barriers, all combine to further marginalize workers and make them vulnerable to exploitation and abuse by employers, temporary help agencies and recruiters.

The proposed changes in Bill 148 are critically needed in Ontario. We also need other legislative and public policy measures such as mandatory employment equity, stronger and increased enforcement of employment standards and occupational health and safety rules, and better access to legal support and representation for workers to bring greater equity and fairness for immigrant, refugee and migrant workers.

BILL 148 RECOMMENDATIONS

a. \$15 per hour minimum wage, Indexing

OCASI strongly supports the minimum wage increase to \$14 by January 2018, and to \$15 by January, 2019.

OCASI also supports **Indexing the minimum wage** so that it is subject to an automatic annual inflation adjustment on October 1 of every year starting in 2019. Immigrant workers, particularly racialized workers and women are among the lowest paid workers in Ontario and most likely to be employed in minimum wage jobs.

The higher minimum wage will bring worker earnings closer to a living wage, especially in urban centres such as Ontario which have higher housing costs and a higher cost of living in general. It can give workers more options to find better living conditions, support their family and plan for the future.

Studies show that a higher minimum wage can lead to increased economic activity. A growing number of small and medium business owners agree that a higher minimum wage is a good economic investment and makes business sense².

b. Equal pay for equal work

OCASI strongly supports equal pay for equal work between **full-time, part-time, casual and temporary workers**, including **those who work for temporary help agencies** and those employed in seasonal work.

Workers who do the same or similar work should be paid the same. This change can reduce the employer incentive to create and sustain precarious work, and can make a

² <http://betterwayalliance.ca/employers-speaking-out/> (accessed July 2, 2017)

significant difference to the workers who are over-represented in that type of employment, including immigrants, racialized and women workers.

OCASI echoes the concern expressed by the Ontario Equal Pay Coalition, that proposed change for equal pay rights must be strengthened by clear direction on what is meant by “substantially the same” work, in order to avoid misapplication by employers trying to avoid their obligations.

As such, we endorse the following recommendation by the Ontario Equal Pay Coalition:

Amend Bill 148 s. 42.1 to read as follows:

Difference in employment status

42.1 (1) No employer shall pay an employee at a rate of pay less than the rate paid to another employee of the employer because of a difference in employment status when,

(a) they perform similar work in the same establishment;

(b) their performance requires similar skill, effort and responsibility; and

(c) their work is performed under similar working conditions.

(1.1) For the purposes of s. 42.1(1), work will be considered similar despite minor variations or differences in duties, responsibilities or work assignments.

Exception

2) Subsection (1) does not apply if the employer is able to show that the difference in pay is the result of

(a) a formal seniority system that does not discriminate on the basis of sex or any other ground protected under the Human Rights Code; or

(b) a merit compensation plan that is based on formal performance ratings and that has been brought to the attention of the employees and that does not discriminate on the basis of sex or any other ground protected under the Human Rights Code.

OCASI agrees with the concerns expressed by Metro Toronto Chinese and Southeast Asian Legal Clinic that the Bill should be strengthened to ensure that temporary help agency workers are paid at the same rate as an employee of the client.

Bill 148 proposes to add subsection 42.2(1) to the *ESA* to ensure employees from temporary help agencies are paid the same rate as an employee of the client. Subsection 42.2(2) provides the following exception to that rule:

s.42 (2) Subsection (1) does not apply when the difference in the rate of pay is made on the basis of any factor other than sex, employment status or assignment employee status.

However, by explicitly mentioning only “sex, employment status or assignment employee status” the wording of this exception leaves out reference to difference in the rate of pay on other grounds such as race, disability, gender identity, ethnic or national origin, and other *Code* protected human rights grounds. We believe that is not the intention behind this exception and recommend the following amendment:

Amend Bill 148 42(2) to read:

s.42(2) Subsection (1) does not apply when the difference in the rate of pay is made on the basis of any factor other than employment status, assignment employee status, and any other grounds protected by the Ontario Human Rights Code.

c. Personal Emergency Leave and New Paid Leave

OCASI strongly supports the proposal in the Bill of 10 Personal Emergency Leave days to all workplaces. Immigrant workers, as well as many other disadvantaged workers often work through an illness or injury at great personal cost for fear of losing wages and losing their job.

There is strong evidence that paid leave can support workers to recover more quickly, prevent further illness and reduce healthcare costs. OCASI supports the recommendation by the Workers Action Centre that paid leave should be increased to seven days. We echo the following recommendation:

Amend subsections 50(5) of the Employment Standards Act to reflect the following:

(5) an employee is entitled to take a total of seven days of paid leave and three days of unpaid leave under this section in each calendar year.

d. Fairer Scheduling

Unpredictable and unstable schedules are increasingly the reality for many Ontario workers, particularly immigrant, racialized and women workers who are over-represented in precarious work. They can experience a fluctuation in wages as a result, which can create instability in many areas of workers lives such as in housing, and impacting their ability to plan and survive.

OCASI supports the proposed new rules with respect to scheduling, including:

- three **hours of pay for on-call employees who are not called in and for any employees whose shift is suddenly cancelled;**
- employees have **the right to refuse shifts scheduled with fewer than 4 days' notice.**

To strengthen this provision, OCASI supports the recommendation by Workers Action Centre that employers should be required to give employees advance notice of their work schedule. As such we recommend:

An amendment should be made to require an employer to provide its employees with a least two weeks' notice of their work schedules.

e. Employment Standards Act Exemptions

The Employment Standards Act (ESA) contains several exemptions of workers in certain occupations and in certain sectors. Migrant agricultural workers are among those who are most affected by exemptions from certain basic protections and entitlements granted to all other worker in Ontario. Such workers are predominantly racialized, being primarily from the Caribbean, Latin America and Southeast Asia.

Eliminating the ESA exemption that subject migrant agricultural workers to unequal treatment is a long-standing priority for OCASI, and one that we have raised at every opportunity with government decision makers. The Ontario government has announced that it will review the ESA exemptions in the fall of 2017. While it is preferable that the removal of ESA exemptions are included in Bill 148, thus bringing fairness and equity more quickly for migrant workers, we agree with the following recommendation by Workers Action Centre:

To retain or establish exemptions, exceptions and special rules for the Employment Standards Act, the following conditions shall be met,

(a) The nature of work in the occupation or sector is such that it is impractical for a minimum standard to apply and would preclude work from being done at all or significantly alter its output. “Nature” of the work relates to the characteristics of the work itself. It does not relate to the quantity or cost of work produced by a given number of employees. Nor does it relate to the nature of the employer and how they have organized work.

(b) Employers do not directly or indirectly control the working conditions that are relevant to the employment standard under consideration.

(c) The occupation or sector that would be receiving an exemption or special rule provides some benefit to society or the economy.

(d) The employee group to whom the exemption or special rule would apply be readily identifiable, to prevent confusion and misapplication of the exemption/special rule.

(e) The employees of the occupation or sector agree to the exemption.

(f) The employees to whom the exemption or special rule would apply are not historically disadvantaged or precariously situated in the labour market. That is, such exemption should no compound existing labour market disadvantage.

f. Support for positive measures in Bill 148

OCASI also supports the following positive changes proposed in the Bill that have the potential to reduce many of the disadvantages faced by immigrant and refugees workers, particularly women and racialized workers³:

³ The following are recommendation put forward by Chinese and Southeast Asian Legal Clinic.

- **Simplify related employer provision to prevent employers from circumventing their obligations to employees through artificial corporate restructuring**
- **One week termination pay** for workers who are on assignment from a Temporary Help Agency, if the assignment is for three months or more and the assignment gets terminated before the three months is over
- **Vacation pay/vacation increase** to three weeks for workers who have worked 5 years or more
- **Job-protected ten days annual emergency leave extended to ALL workplaces, protecting an additional 1.7 million workers in smaller workplaces; and ensuring two of these ten days will be paid with no doctor's notes required to access any of the paid or unpaid emergency leave days**
- **Enhanced leave of absences to care for one's family and to deal with tragic events surrounding one's child**
- **Eliminate the requirement of the employee to inform their employer of a contravention of the ESA prior to filing a claim with the Ministry of Labour**
- **Strengthening the power of the ESA Director to collect amounts owing through such measures as issuing a warrant to a sheriff or registering a lien and charge with the Land Registry office.**
- **Easier access to union protection, especially for those in precarious sectors like cleaners, security guards, homecare and community service workers.**