Update: Changing Workplaces Review Final Report

STATEMENT FROM ONTARIO CHAMBER OF COMMERCE AND KEEP ONTARIO WORKING COALITION

For more than two years, the Ontario Chamber of Commerce and the Keep Ontario Working coalition have been productive partners in working with the government and Special Advisors to ensure that the employer voice is represented in this report. The Changing Workplaces Review has been based on academic and legal analyses, and now it is the responsibility of the Government of Ontario to decide which among these recommendations should be adopted.

The employer community reiterates our call that it is reasonable and appropriate that recommendations only be adopted following a comprehensive economic impact analysis. This analysis should have clear acceptability thresholds, and the reforms implemented should be limited to those that pass such thresholds or are being implemented with a commensurate economic offset measure, in order to help businesses transition into any regulatory changes.

An economic impact analysis is the only way that the Government of Ontario can protect jobs and workers against the unintended consequences that may come as a result of implementing these recommendations.

In the coming days, many will seek feedback on our perspective as it relates to the recommendations in the report, including the expansion of personal emergency leave and vacation time. While we would urge caution on those specific recommendations, it is fundamental that government understands the associated impact on our economy of those and all recommendations before deciding how to proceed. These standards come at a cost to employers, and consumers, and will impact our economic health and the ability of employers to create jobs. **The Government of Ontario should not proceed to invoke changes until they can fully identify the scale of the impact.**

Employers are acutely aware of what it takes to create good jobs and train the next generation of workers. That is why we are so concerned about potential unintended consequences. For example, many of our members have told us that they will be far less inclined to hire 15, 16 and 17-year-old workers if the student minimum wage is removed. Employers often see themselves as doing a public good in hiring young people who have no previous experience, often giving Ontario's youth basic skills that enable them to grow into more productive members of our society. If all monetary incentive is removed from employers to 'take a chance' on a young person that has no previous work experience, they will be far less inclined to do so.

Removing certain sectoral exemptions will also be extremely challenging for certain industries, whose entire planning has been developed around these exemptions for generations. Another theme we have spoken to in great detail is the need for better education and enforcement around existing regulations before the layering in new regulations.

These are the types of issues that need to stand up to economic analyses and require broader research in order to protect against our concern that heavier regulation will cause lower labour force participation and higher unemployment, especially among the young. We are pleased that the Government has withheld comment at this time and hope that they will signal that the appropriate research will be conducted in advance of any legislation being introduced. Any and all of the costs associated with these recommendations would be compounded in a dramatic way by expanding the minimum wage. Given that changes to the minimum wage were explicitly left outside of the terms of this Review, we cannot help but wonder if the recommendations would have been different if the advisors would have been permitted to consider an increase to the minimum wage as an alternative to these recommendations. As employers, our members believe that increasing the minimum wage and fully implementing these recommendations would have the perverse effect of discouraging investment and eliminating jobs, thereby diminishing economic opportunities in Ontario.

KEY ISSUES

Enforcement and Education
We agree with the comments by the Special Advisors that "The employer community, which is overwhelmingly law-abiding and respectful of the rights of its employees under labour law and the constitution, will have no interest in protecting those employers who violate the law and who undermine the integrity of the secret ballot process." We support taking action against those who willfully ignore their obligations under the law. Fundamental to this, however, is ensuring that appropriate steps are taken to educate employers. We believe that the language on these points is very strong and would further suggest broader coordination and communication between the Ministry of Labour and other ministries within government to enhance a single-point of contact between government and businesses, especially small businesses.

Personal Emergency Leave
The report does not recommend extending paid sick leave to all employees, with the advisers saying it would be beneficial but extending personal emergency leave to all employees is a more important first step. They also recommend that personal emergency leave be available for victims of domestic violence. Currently, personal emergency leave is mandatory only from employers with 50 or more employees, and can be used for illness, injury, or urgent matters, such as the employee's babysitter calling in sick.

Basic Standards – Exemptions
The report says: "Exemptions, and specific regulations, if justified, should be focused (not overly broad), balanced, decent, and fair… the Government should make the review of existing exemptions a priority and adopt a sector specific approach to the regulation of scheduling through the same process." They further provide some recommendations related to specific exemptions such as the elimination of exemptions related to students (student minimum wage rate and exemption for the "three-hour rule"). The report also recommends that liquor servers' minimum wage should be phased out over three years.

A key question raised is whether it is fair to treat part-time, casual, temporary, contract and seasonal employees differently than comparable full-time employees. The advisors say, "We see this issue as one of the more important areas where the law should change". They recommend a new rule that limits differential pay for these groups of employees unless there are objective grounds such as seniority,

merit or other objective factors that justify a difference in pay.

Scheduling
The advisors recommend a sector specific approach to the regulation of scheduling, prioritizing the retail and fast food sectors for review. They recommend a new rule that provides an employee (after 1 year of service) the right to request, in writing, that the employer decrease or increase their hours of work, give them a more flexible schedule or alter the location of their work. The employer should be required to give the employee an opportunity to discuss the issue and provide reasons in writing if the request is refused.

Temporary Workers
The advisors recommend limiting the amount of time during which an assignment employee can be paid less than the workers the client hired directly. This limit is not intended to limit the duration of the triangular relationship itself, if all parties wish to continue it, but differential pay cannot continue indefinitely. The advisors recommend a qualifying period of six months before there is a requirement for equal pay and point to countries like the UK as having a similar system.

Personal Emergency Leave – Paid Sick Days
The advisors highlighted the importance of personal emergency leave (PEL) and bereavement leave and recommend the extension of the entitlement to all employees - not only to those employed in workplaces with 50 or more employees. They recommend that bereavement leave should be removed from the ESA's PEL provisions and be made an independent entitlement for up to three unpaid days for the family members covered by the current PEL provisions. They further recommend the PEL provisions be amended to provide an annual entitlement of seven days, and be expanded to include domestic violence as a reason for absence. As to the requirement to provide evidence of entitlement to PEL for illness, they recommend that employers be required to pay for doctor's notes if they request them from an employee.

With respect to paid sick leave, despite earlier media reports, they conclude that the more important first step is the extension of PEL to all employees so that everyone has a basic right to time off in the case of personal emergency.

Vacation
The advisors recommend increasing vacation entitlement to three weeks after five years of employment with the same employer, and making a corresponding amendment to the vacation pay provisions (i.e. at least 6% vacation pay). The advisors suggest that compared to other Canadian provinces, Ontario has the least generous provisions with respect to vacation time and pay. Most other provinces and the federal jurisdiction start with 2 weeks of paid vacation, and increase it to 3 weeks after a certain period of employment, which ranges from 5 to 15 years. One province, Saskatchewan, starts with 3 weeks of paid vacation, and increases it to 4 weeks after 10 years of employment.

Exclusions from Basic Standards - Interns
Interns and trainees are employees for purposes of the Act and entitled to the minimum standards set unless several conditions are met. The advisors recommend the elimination of this exclusion for various reasons including the abuse that is apparent by some employers.

Exclusions from Collective Bargaining
Currently the following professions are excluded from collective bargaining: domestics, hunters and trappers, members of the architectural, dental, land surveying, legal or medical profession and agricultural and horticultural employees. The Special Advisors recommend that these groups should be covered by the LRA.

Secret Ballot Voting
The advisors chose to protect freedom of choice by protecting the secret ballot vote process that protects both choice and secrecy. However, they state that employer (or union) misconduct that undermines employee independence destroys the reliability of the secret ballot process. They recommend preservation of the secret ballot vote process for certification provided there are appropriate remedies for employer misconduct.

Sharing of Employee Lists
During an organizing campaign, an employer maintains the right and the means to communicate to their own employees, and it often does communicate as soon as it finds out an organizing campaign is occurring. To level the playing field, the advisors suggest that unions should have the information necessary to communicate effectively with the employees.

They are therefore recommending that upon application by a union, if it appears that a union has the support of approximately 20% of the employees in a bargaining unit, the Board shall require the employer to disclose to the union the list of employees in the bargaining unit, together with the work location, address, phone number and personal email address of each employee. The same requirement shall apply if, upon application, it appears to the Board that approximately 20% of the employees in an existing bargaining unit have demonstrated that they no longer wish to be represented by a union; the same list shall be provided to the employee representative.

BACKGROUND – OTHER ISSUES

In the Summary document, the **Ontario Chamber of Commerce** and the Keep Ontario Working coalition were one of the few groups mentioned, demonstrating the impact of our advocacy in recent years on these issues:

> *The mandate also directed us to be supportive of business in a changing economy. The Ontario Chamber of Commerce and the Keep Ontario Working Coalition have said: "the goals of economic growth and improved employee rights are not mutually exclusive." There is a need to take a balanced approach to change, and we have endeavoured to strike this balance by taking the bona fide interests of all stakeholders into account in developing recommendations.*

The Challenge
The Special Advisors, in a few places, articulate the concerns that they are trying to address. In particular, they are concerned that unionization in the private sector has dropped (from 19.2% in 1997 to 14.3% in 2015) "making employment standards and their enforcement much more important for the non-unionized worker." They also point to research that suggests that nonstandard work (made up of multiple jobs, unpredictable shifts, work through a temporary help agency, temporary limited term

contracts and/or solo self-employment) has grown nearly twice as fast as standard employment with a 1997 to 2015 average annual rate of 2.3 percent per year.

Based on various measures, the advisors estimate that the number of vulnerable workers in precarious work in Ontario in 2014 was between 30-32%. This includes:

- Working full-time for low wages, with minimal or no benefits, (such as no pension plan);
- Working for low wages without any or minimal benefits such as without a pension plan;
- Work part-time involuntarily because they want more hours – about 30% of all part-timers;
- Work part-time voluntarily, in the sense that they do not want, or cannot avail themselves of, more hours;
- Work for temporary help agencies or on a temporary basis directly for employers;
- Work on term or contract;
- Seasonal workers or casual workers;
- Solo self-employed with no employees;
- Multiple jobs holders where the primary job pays less than the median hourly rate.

With specific reference to the OCC, the Special Advisors state: "We have considered the point of view of the Ontario Chamber of Commerce (OCC) and the Keep Ontario Working Coalition (KOWC) that the issue of precariousness in our society has been overstated. Respectfully, we do not agree and we have tried to quantify the number of vulnerable workers in precarious work in Ontario and to set out all the other relevant data in Chapter 4. Even if the number of affected workers had been significantly smaller than we have estimated, our conclusion is unaffected, as the issues arising out of the changed nature of workplaces present our society with serious policy concerns that should be addressed."

Benefit and Pension Plan Coverage
The advisors recommend that the government initiate an urgent study on how to provide at least a minimum standard of insured health benefits across workplaces, especially to those full-time and part-time employees currently without coverage, and to the self-employed, including small employers.

Consolidation and Amending of Bargaining Units
The advisors recommend that the Ontario Labour Relations Board (OLRB) have the power in sectors or industries where employees have been historically underrepresented by unions, to consolidate existing and/or newly certified bargaining units involving the same employer and the same union, to contribute to the development of effective collective bargaining relationships in these sectors or industries. The advisors state: "Single locations units of the same employer are unlikely to be viable, and they have concluded that the only way collective bargaining in those industries or sectors can likely be viable is if units can be certified on a smaller basis, such as by single location, and then varied or consolidated afterwards with additional locations. The OLRB would be given certain powers to implement this model; e.g., to direct that the terms of a collective agreement apply in the varied or consolidated unit."

Furthermore, franchisees of the same franchisor would be treated in an analogous way as a single employer with multiple locations in industries where employees have been historically underrepresented by unions. The advisors conclude that, similar to the finding with regard to a single employer with multiple locations, collective bargaining with a single franchisee is unlikely to be viable. They are not recommending a system where franchisees of different franchisors are compelled to bargain together or that the franchisor should be named as an employer with its franchisees.

Regular Review
In their report the advisors state: "Ontario should make an ongoing commitment to an independent review of the legislation every five to seven years." Such a continuous review of the Act would lend to a perpetual state of shifting rules, seriously inhibiting the ability of employers and businesses to determine what their risks and opportunities are associated with doing business in Ontario.

See some of the media coverage from today's release in the Toronto Star and the Canadian Press.

Read the full Changing Workplaces Review Final Report.

Read the Summary of the Final Report.