

**Submission to the
Standing Committee on Finance and Economic Affairs
Bill 148: the *Fair Workplaces, Better Jobs Act, 2017.***

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The Social Development Centre Waterloo Region (known formerly as the Social Planning Council of Kitchener-Waterloo) is a community based social planning and community development organization with a mission to cultivate community knowledge through collective agency to advance social justice. We made submissions to both Bill 18 in 2014 and the Changing Workplaces Review in 2015 and are pleased the Fair Workplaces, Better Jobs Act, 2017 (Bill 148) reflects many of the points we raised during these earlier consultations.

Bill 148 takes very important steps toward modernizing employment legislation to create better jobs and workplaces in Ontario. We applaud the main purpose of the revised act to address business practices that create precarious, tenuous and exploitive work. We see as positive:

- Including minimum wage as part of the employment standards act;
- Increasing minimum wage levels significantly and indexing this to the cost of living;
- Prohibiting employers from treating employees as though they are not employees, e.g. as independent contractors;
- Addressing compensation and benefit disparity between full and part time workers and for temporary agency workers;
- Protecting workers from reprisal if they raise concerns about their workplace, starting with them not having to notify their employer if they are bringing a complaint;
- Aligning labour relations and union organizing with employment standards;
- Strengthening the investigative capacity, authority and restitution power of the Director of Employment Standards.
- Launching new education programs for both employees and employers.

However, we believe the intent is too easily diluted in some of the details of Bill 148 which, if not remedied, can perpetuate the very same conditions the Bill is intended to redress for some of the most vulnerable workers:

- Exclusions of different sectors, particularly those known for vulnerable workers;
- Vague definitions such as for *equal pay for equal work*;
- Allowing collective agreements to supersede schedule notice requirements;
- Limited proactive inspections (only 1 in 10 annually);
- Heavy reliance on complaint based enforcement.

The following comments are in three main areas:

- Gaps to address before Bill 148 is finalized;
- Concerns that have been raised about the burden the revised regulations will place on employers; and
- Integration of the changes in Bill 148 with other legislation and provincial government programs.

Gaps That Need to Be Addressed

- *There should be no exemptions.*

Instead, careful attention needs to be paid to defining terminology e.g. how *work* is defined, differentiating *continuous employment* from specialized or short term *jobs* as well as distinguishing criteria for determining *equal work*. It is imperative that current unfair practices are stopped and that new loopholes aren't introduced that result in circumventing the intention of the legislation to create fairness and protect all workers.

Any work that is continuous and ongoing should be defined it as sustained employment, whether full time or part time or whether the same employee fills the position or not. This type of work should be subject to all of the regulations that govern employment.

If work is being divided into multiple part time contracts, especially if done to avoid creating full time positions eligible for benefits and other employee supports, these positions need to be combined to make full time positions. The onus should be on the employer to justify why multiple part time contracts are necessary rather than combining these to create more secure employment.

Short term and seasonal contracts can be defined as separate and unique categories of employment but should be subject to the same test as outlined above. Furthermore, these workers should have the same protections and entitlements as all other workers, at least on a prorated basis.

Temporary employment agencies should be defined as a special category of employment services, not a type of employment. Workers placed by temp agencies should be seen as working for the employer for whom they are doing the work and their positions subject to the same tests as outlined above. There should be a cap on the percentage taken by the temporary agency for placing a short term worker.

- *Local Education and Support*

Unions make an important contribution toward maintaining worker rights. However, not all workers have access to a union nor do all unions support workers in every situation. Often the choices faced by workers are 1) put up with an unfair situation, 2) quit and find another position, 3) get legal support or 4) to try to fight the issue on their own. Even if they qualify for assistance at a community legal centre, there may not be sustained support to deal with complex legal processes.

There also needs to be community based education and support that can augment union support (and even work in partnership with them) to educate employees and employers alike, to support non-unionized workers or workers who are in a drawn out complaint process.

- *Designated leave for sexual assault or domestic violence*

Having protected time off to deal with traumatic events is important and could be a supportive measure so long as worker's privacy is maintained and that requesting such leave does not compromise their continued employment due to stigmatization and myths related to family and sexual violence.

Concerns About the Burden on Employers

Alarming trends have emerged in our employment environment:

- A growing gap between highest and lowest income earners, first seen in the 1980s;
- Significant disparity of compensation between senior management and other employees;
- Post-liberal austerity myths that those who succeed financially owe it only to their own efforts, that everyone has equal opportunity and those who do not do well have only themselves to blame;
- Increasingly exploitive business practices resulting from cutting costs and the financialization in sectors including those that supply basic needs such as housing and food;
- Trends toward part-time, short-term, low-paid, precarious and exploitive work that put even more people, particularly our young adults, at risk of continued or recurring cycles of poverty regardless of their skills and ability;
- A job is no longer a pathway out of poverty when those working full time, full year are earning below the poverty line;
- Insecurity of both wage levels and job retention coupled with greater pressures to do more with less has created greater worker stress and increased reliance on disability programs including Ontario Disability Support Program.

Some may see these as perfectly reasonable changes given global economic realities and opportunities. Others have named this a 'race to the bottom'. Certainly, this situation may create wealth for some but does not necessarily help to create healthy, sustainable communities.

It is against this backdrop that the alarm, raised by Chambers of Commerce and many employers, should be assessed. There is significant disconnection between the reality of what has emerged in our employment environment and recognition this has resulted from the business models being practiced by many employers, including governments and large institutions such as hospitals and university. It is not only the traditional low wage service industries that aim to minimize personnel costs, often the single biggest cost in any sector.

Business leaders who made presentations at the public hearing for Bill 148 in Kitchener on Tuesday July 18th were primarily concerned about the pace with which the minimum wage would be increased if Bill 148 goes forward. Many requested that an economic analysis be done on the impact on businesses. However their interest seemed only to look at their projected cost increases and none seemed ready to 1) state their current profits, 2) acknowledge their business model is based on exploitive employment practices or 3) admit their low paid employees are living in poverty.

Furthermore, the cost estimates that were provided included much more than the impact of meeting the requirements of Bill 148. Whereas the main financial impact of Bill 148 would be related to an increase in minimum wages, higher vacation pay rate after three years of employment, and costs related to other requirements such as protected leave or late notice schedule change payments. Projected costs seemed to include in calculations:

- Increases for all employees to maintain existing pay scale differences and other compensation differences such as vacation pay;

- Costs to provide replacement staff if every employee took all 10 days of protected leave (although the requirement is for only two of those days to be paid in a given year);
- Scheduling change notification costs that included costs for staff replacement, client cancellations and client compensation.

It is right and fair that employers have the tools they need to maintain a productive work environment and sustain their operations. These tools need to be humane and fair for the employees who are doing the work to support the operations or serve customers. Bill 148 does this to a great extent and, with some changes can be the foundation for all employers to maximize their employees through compensation and protections that ensure the employee is not living in poverty.

Implementing wage increases and job protections will allow low paid employees to have greater security in their employment situations. This must be the driving force behind revising employment legislation. As we have learned from employers who pay a living wage level in Waterloo Region, paying decent wages and providing secure employment is good business practice and benefits their bottom line.

The Government of Ontario should listen to this call from employers. However, rather than delay the implementation of measures that are long overdue, the Government should consider ways to help employers prepare for and/or weather the challenges they may face:

- Establish clearly and firmly that Ontario needs businesses that are about more than profit,
- Conduct an economic analysis that:
 - Includes fully transparent profit margins when assessing the impact of changes in workplace regulations on employers,
 - Includes the impact on employees and not solely employers,
- Educate, mentor and support employers plan for change and evaluate the impact of change:
 - Look to the Living Wage and similar movements about how business can improve their bottom line by increasing wages and ensuring employees are protected
 - Living Wage Waterloo Region¹ has surveyed employers and employees to understand the benefits and challenges of increasing pay to living wage levels and the human resource policy shifts that are helpful in the transition.

Integration of Bill 148 with Other Legislation and Provincial Government Programs

Ensure there are no contradictory requirements in other areas of government regulations, programs, contracts or funding. In particular, that:

- Eligibility requirements and claw-backs be adjusted for programs such as Ontario Works or the Ontario Disability Support Program, so part time workers can better off after the minimum wage is increased and more protections are in place;

¹ Living Wage Waterloo Region 2016 Annual Employer Survey report and Employee Survey
<http://livingwagewr.org/wp-content/uploads/2016/10/2016-Living-Wage-Waterloo-Region-Employee-Survey-Report.pdf>

- Charitable organizations who receive funding from the Ontario Government, whether ongoing program funding or short term projects, have this funding proportionally increased to enable these employers to meet the requirements of new employment regulations.

Recommendations

- Specifically define terms and categories of employment to support the creation of stable employment positions with correspondingly appropriate pay levels, benefits and protections:
 - Any work that is continuous in nature should be treated as employment,
 - Remove any exemptions for wage levels or benefits for sectors that have multiple part time positions to do the same work,
 - Remove exemptions for any sector that has continuing positions, and do not allow work to be segmented in any way as a business model to avoid paying appropriate pay levels and benefits.
- Invest in local supports to augment the roles of labour unions and employment inspectors:
 - Fund third party local organizations to provide education and support to workers and employers.
 - Increase funds to community legal services to pursue action where needed.
 - Develop a transition program for employers that subsidizes wage increases if they demonstrate a need and develop a clear time limited plan to redefine their business model and make the transition to fully adopt all requirements of the revised employment legislation – Living Wage Waterloo Region has begun to document the transition process with larger employers so this can be a component of transition planning) e.g. tips should be taken in as revenue so fair wages can be sustained.
- Rather than provide employer exemptions, ensure there is an integrated system of worker supports to ensure everyone can have a decent life – for example:
 - Ensure fair integration with other programs e.g. OW and ODSP clawbacks, eligibility for tax credits and child benefit, Basic Income etc.
 - Create local employment programs that provide supported long term employment and fair compensation for those who are not competitive in the broader employment environment

Conclusion

If companies and institutions can't sustain fair and decent pay levels and workplaces, they should probably not be doing what they are doing. Exploitive business practice is not an adequate foundation for sustaining our society. We have long passed the point of everyone pitching in and making things work to a tipping point of exploitation creating a seductive situation that few employers can ignore. Bill 148 should be legislation that will require we stop "the race to bottom".

Respectfully submitted,

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