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APPENDIX "H"

LIST OF WORKERS ACTION CENTRE RECOMMENDATIONS FOR BUILDING DECENT JOBS FROM THE GROUND UP¹

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Introduction

RECOMMENDATION 1.1

The Changing Workplace Review should be guided by the principle of decency as was the case in Harry Arthurs' review of the Federal Labour Code:

Labour standards should ensure that no matter how limited his or her bargaining power, no worker in the federal jurisdiction 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.

1 Excerpted from "Still Working on the Edge", Workers Action Centre, March 2015, Brief to the Changing Workplace Review

Inclusive Employment Standards Protection

RECOMMENDATION 2.1

Broaden the definition of employee along the lines of Ontario's *Health and Safety Act*, which defines a worker as "a person who is paid to perform work or supply services for monetary compensation."

RECOMMENDATION 2.2

Make employers who enter into contracts with subcontractors and other intermediaries, either directly or indirectly, liable both separately and together for wages owed and for statutory entitlements under the *ESA* and its regulations.

RECOMMENDATION 2.3

No exemptions to the *ESA* and no special rules.

RECOMMENDATION 2.4

There should be no differential treatment in pay and working conditions for workers who are doing the same work but are classified differently, such as part-time, contract, temporary, or casual.

RECOMMENDATION 2.5

»» Where an employer provides benefits, these must be provided to all workers regardless of employee status (e.g. part-time, contract). Full and equal benefits are the priority, as prorated benefits do not amount to equivalent conditions.

»» Where an employer provides benefits, they cannot discriminate due to the age, sex, or marital status of the employees. Amend the *ESA* to prohibit discrimination on the basis of form of the employment relationship (e.g., hours usually worked each week).

RECOMMENDATION 2.6

»» Ensure that temp agency workers receive the same wages, benefits and working conditions as workers hired directly by the company.

»» Require temporary help agencies to provide employees with the hourly mark-up fees for each assignment (i.e., the difference between what the client company pays for the assignment worker and the wage the agency pays the assignment worker).

»» Make client companies jointly responsible with temp agencies for all rights under the *ESA*, not just wages, overtime and public holiday pay.

»» Eliminate barriers to client companies hiring temp agency workers directly during the first six months (repeal Section 74.8(1)8 of the *ESA* which allows agencies to charge fees during the first six months).

»» Make the client companies and agency liable for termination notice or pay in lieu of notice when the assignment is without a term or when a worker is terminated before the assignment is completed.

»» Prohibit long-term temporary assignments. Require that agency workers become directly hired employees after a working a cumulative total of six months for the client company.

»» No more than 20 percent of staff can be assignment employees. Every employer shall ensure that the total number of hours worked by assignment employees in a work week does not exceed 20 percent of the total number of hours worked by all employees, including assignment employees, in that work week.

RECOMMENDATION 2.7

»» Establish a reverse onus regarding employee status, under which a worker is presumed to be an employee unless the employer demonstrates otherwise.

»» Work with federal agencies such as the Canadian Revenue Agency and Employment Insurance to map sectors where misclassification is growing or is already widespread. Undertake proactive sectoral inspections with stiff penalties for those in violation. Publicize names of companies in violation to deter misclassification.

Decent Hours for a Decent Income

RECOMMENDATION 3.1

The *ESA* should provide for an eight-hour day and a 40-hour work week. Employees should have the right to refuse work beyond 40 hours. Overtime at time and a half should be paid (or taken as paid time off in lieu) after 40 hours.

RECOMMENDATION 3.2

Repeal overtime exemptions and special rules.

RECOMMENDATION 3.3

Repeal overtime averaging provisions in the *ESA*.

RECOMMENDATION 3.4

Permits for overtime in excess of 48 hours per week must be reviewed. Permits should only be given in exceptional circumstances and be conditional on demonstrated efforts to recall employees on layoff, offer hours to temporary, part-time and contract employees, and/or hire new employees. Annual caps of no greater than 100 hours per employee must be set on overtime hours allowed by permits. Annual permits must set a weekly or quarterly cap to avoid unhealthy overtime in busy periods. Workers should

retain the right to refuse overtime when their employer has been granted an overtime permit. Names of companies with overtime permits should be publicized.

RECOMMENDATION 3.5

In addition to an unpaid, half-hour lunch break, two paid breaks, such as a coffee break, should be provided by the employer.

RECOMMENDATION 3.6

Increase paid vacation entitlement to three weeks per year. After five years of service, increase vacation to four weeks of paid vacation per year.

RECOMMENDATION 3.7

Repeal exemptions from public holidays and public holiday pay.

RECOMMENDATION 3.8

»» All workers should receive a written contract on the first day of employment setting out terms and conditions, including expected hours of work.

»» Require employers to offer available hours of work to those working less than fulltime before new workers performing similar work are hired.

»» Require employers to preferentially consider current part-time or casual employees before hiring additional part-time or full-time workers.

»» Provide just-cause protection to contract workers if, at the end of a contract, another worker is hired to do the work previously done by the contract worker.

»» Regulate renewal of contracts so that seniority translates into permanent job status.

RECOMMENDATION 3.9

Amend the *ESA* to require that the minimum shift per day be three hours, scheduled or casual.

RECOMMENDATION 3.10

»» Require two weeks' advance posting of work schedules (including when work begins, ends, shifts, meal breaks).

»» Require that employees receive the equivalent of one hour's pay if the schedule is changed with less than a week's notice, and four hours' pay for schedule changes made with less than 24 hours' notice.

»» Workers must be able to ask employers to change schedules without penalty (i.e., protection from reprisals).

RECOMMENDATION 3.11

Repeal the exemption for employers of 49 or less workers from providing personal emergency leave.

RECOMMENDATION 3.12

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.

RECOMMENDATION 3.13

Repeal Section 50(7) and amend the *ESA* to prohibit employers from requiring evidence to entitle workers to personal emergency leave or paid sick days.

Rights without Remedies: Improving Enforcement

RECOMMENDATION 4.1

»» Implement a deterrence model of enforcement that compels employers to comply with the *ESA*.

»» Develop an expanded proactive system of enforcement to increase compliance.

RECOMMENDATION 4.2

Where individual claims confirm employer violations, then an inspection shall be expanded to determine if the employer has violated the rights of current employees and remedies all monetary (e.g., unpaid wages, overtime pay, public holiday pay, vacation pay, etc.) and non-monetary violations (e.g., hours of work, breaks, agreements etc.) detected.

RECOMMENDATION 4.3

Change the proactive inspection model to enforce rights for current employees. The goal of proactive inspections should be to ensure current workers get unpaid wages and core standards are adhered to, in addition to educating employers to guarantee future compliance.

RECOMMENDATION 4.4

»» Increase staffing to the dedicated enforcement team in order to increase proactive inspections.

»» Partner with organizations working directly with precarious workers (e.g., workers centres, community legal clinics, unions, immigrant serving agencies) to identify where

violations are occurring and identify which investigative strategies will best uncover employer tactics to evade or disguise violations.

»» Strategically target emerging employer practices, such as misclassification of employees as independent contractors or failure to pay overtime, for proactive sectoral inspection blitzes.

»» Establish a provincial fair wage policy for government procurement of goods and contracts for work or service that would require adherence to minimum employment standards and industry norms.

RECOMMENDATION 4.5

»» a “hot cargo” provision in the *ESA* that would enable inspectors to impose an embargo on goods manufactured in violation of the Act to ensure that, in fairness, penalties are felt by all parties along the chain of production.

»» Hold companies in low-wage sectors responsible under a duty based regime for subcontractors’ violations of *ESA* wages and working conditions. Companies would have the duty to know that sufficient funds exist in the contract with subcontractors to comply with the *ESA*. This would follow the State of California’s Labour Code section known as the “brother’s keeper” law.

RECOMMENDATION 4.6

»» Create a reverse onus so that employers have to disprove a complaint against them, rather than workers having to prove that the violation occurred.

»» Direct one-on-one legal assistance to workers to make employment standards claims.

»» Revoke the requirement that workers first attempt to enforce their *ESA* rights with the employer before they are allowed to file a claim.

»» Fund interpreters for the claims process to ensure access for employers and employees who do not speak English.

RECOMMENDATION 4.7

When employers do not comply with orders to pay unpaid wages, the Ministry of Labour may take any appropriate enforcement action to secure compliance, including requesting that provincial or municipal agencies or departments revoke or suspend any registration certificates, permits, or licenses held or requested by the employer or until such time as the violation is remedied.

RECOMMENDATION 4.8

- »» Establish set fines (rather than Employment Standards Officer discretion) for confirmed violations, including settlements and voluntary compliance.
- »» Increase fines to double or triple the amount of wages owed to provide adequate deterrence for violations.
- »» Use monies collected as fines to expand proactive inspections, extended investigations and collection activities.
- »» Make prosecution policy simple and transparent. Each repeat violation or non-payment of orders must be prosecuted under Part III provincial offences.
- »» Provide anti-reprisals protection to those workers whose workplace is subject to proactive inspection.
- »» The names of all employers found in violation of Employment Standards should be publicized on the Ministry of Labour website.

RECOMMENDATION 4.9

- »» Order employers to pay interest on all unpaid wages in all cases confirmed by the claims investigation (regardless of whether claims are settled, voluntarily complied with or result in order to pay).
- »» Require any employer who fails to pay the wages required under the *ESA* to pay the employee the balance of the wages owed and an additional amount equal to twice the unpaid wages. The Ministry of Labour shall have the authority to order payment of such unpaid wages and other amounts.

RECOMMENDATION 4.10

- »» Authorize the Ministry of Labour to impose a “wage lien” on an employer’s property when an employment standards complaint is filed for unpaid wages (i.e., prejudgment).
- »» Authorize the Ministry of Labour to request bonds in cases where wages may go unpaid due to an employer’s history of previous wage claim violations or sectors at high risk of violations (e.g, recruitment).
- »» The Ministry of Labour should establish a wage protection plan paid for by employers, similar to the Workplace Safety and Insurance system, not through general revenues. Employers, not taxpayers, should share the costs of restructuring and of employer practices that result in violations.
- »» Make Part III prosecution mandatory in all cases where wages go unpaid to deter the practice of noncompliance with Ministry of Labour orders to pay.

Workers' Voice

RECOMMENDATION 5.1

»» Establish a formal anonymous and third party complaint system. To make employment standards enforcement and legal remedy accessible to current employees, inspection initiated after a formal anonymous or third party complaint is filed should aim to detect and assess monetary (e.g., unpaid wages, overtime pay, public holiday pay, vacation pay, etc.) and non-monetary violations (e.g., hours of work, breaks, agreements etc.), remedy violations with orders to pay for all current employees, and to bring the employer into compliance for the future. Institute an appeal process if a proactive inspection is not conducted. Make the report of the proactive inspection available to all employees. The officer's decisions could be appealed either by employees or the employer.

RECOMMENDATION 5.2

»» Protect workers who come forward to assert their rights by establishing substantial fines for employers who retaliate against them.

»» Conduct education and outreach to inform employers and employees about anti-reprisals protections.

»» Publicize confirmed anti-reprisal cases (protecting employee confidentiality) in the media, on government websites, and in educational materials.

»» To enable some workers to file individual claims while still on the job, develop an expedited investigation process for reprisals so that reprisal complaints will be heard immediately. Provide interim reinstatement, if requested by the worker, pending a ruling on cases of dismissal due to reprisals. This would reduce the penalizing impact of reprisals on workers.

»» In the case of migrant workers, prohibit employers from forcing "repatriation" of an employee who has filed an *ESA* complaint.

»» The Ministry of Labour should work with the federal government to ensure that migrant workers who have filed complaints are granted open permits. See additional information on this recommendation in the Migrant Workers section of the report.

RECOMMENDATION 5.3

»» Amend the *ESA* to include protection from wrongful dismissal. Authorize a procedure for making complaints against a dismissal considered unjust by an employee.

»» Claims of unjust dismissal should be prioritized and investigated quickly, with interim reinstatement pending ruling, if requested by the worker.

RECOMMENDATION 5.4

Ontario should adopt Quebec's legislative approach to anti-psychological harassment under its labour standards. Like Quebec, Ontario should ensure that employees have a right to a workplace free from psychological harassment. Employers must take reasonable action to prevent harassment and, whenever they become aware of such behaviour, put a stop to it. Workers should have recourse against psychological harassment including reinstatement, punitive and moral damages, indemnity for loss of employment, compensation for psychological support if needed, and the ability to order the employer to take reasonable action to put a stop to harassment.

RECOMMENDATION 5.5

»» Establish the legislative framework to enable sectoral bargaining in Ontario.

»» Allow caregivers under the Temporary Foreign Worker Program (TFWP) to unionize and bargain sectorally with employer representatives.

»» The Agricultural Employees Protection Act established in 2002 is so ineffective that no collective bargaining relationship has ever been established. This Act should be repealed and farm workers should have the same right to general collective bargaining under the Ontario Labour Relations Act (OLRA) that other workers have.

RECOMMENDATION 5.6

Enable unions to negotiate the terms and conditions of outsourced workers.

RECOMMENDATION 5.7

Repeal the bar on unionized workers from making claims through the *ESA* and enable unions to make third party complaints on behalf of non-unionized workers.

Migrant Workers

RECOMMENDATION 6.1 (METCALF FOUNDATION)

Legislation to protect migrant workers from exploitation by recruiters and employers must be designed on a proactive platform that meets international best practices and domestic best practices represented by the Manitoba's Worker Recruitment and Protection Act and the enhancements developed in Saskatchewan and Nova Scotia.

Ontario should adopt a proactive system of employer registration, recruiter licensing (including the mandatory provision of an irrevocable letter of credit or deposit), mandatory filing of information about recruitment and employment contracts, and proactive government inspection and investigation in line with the best practices model adopted in Manitoba's Worker Recruitment and Protection Act and the enhancements developed in Saskatchewan and Nova Scotia.

Specific enhancements to the Manitoba model that should be adopted in Ontario include:

- »» Mandatory reporting of all individuals and entities that participate in the recruiter's supply chain in Canada and abroad;
- »» Mandatory reporting of detailed information regarding a recruiter's business and financial information in Canada and abroad as developed in Nova Scotia's legislation;
- »» Explicit provisions that make a licensed recruiter liable for any actions by any individual or entity in the recruiter's supply chain that are inconsistent with the Ontario law prohibiting exploitative recruitment practices;
- »» Public registries of both licensed recruiters and registered employers;
- »» Explicit provision that makes it an independent offence for an employer to engage the services of a recruiter who is not licensed under the legislation;
- »» Explicit provisions that make an employer and recruiter jointly and severally liable for violations of the law and employment contract;
- »» Protections against the broader range of exploitative conduct that is prohibited under s. 22 of FWRISA in Saskatchewan (i.e., distributing false or misleading information, misrepresenting employment opportunities, threatening deportation, contacting a migrant worker's family without consent, threatening a migrant worker's family, etc.); and
- »» Provisions allowing for information sharing that enhance cross jurisdictional enforcement of protections against exploitative recruitment practices, including information sharing with other ministries or agencies of the provincial government, department or agencies of the federal government, departments or agencies of another province or territory or another country or state within the country as developed in Saskatchewan's legislation.¹¹⁰

RECOMMENDATION 6.2

- »» Amend the *ESA* to include a process for expediting complaints of reprisals and, in the case of migrant workers, ensure that such complaints are heard before repatriation. Where there is a finding of reprisal, provision would be made for transfer to another employer or, where appropriate, reinstatement.
- »» The *ESA* should explicitly prohibit an employer from forcing "repatriation" on an employee who has filed an *ESA* complaint.
- »» Change the Canada-Ontario Immigration Agreement (COIA) to create an open work permit program for migrant workers who have filed complaints against recruiters, under the Employment Protection for Foreign National Act, and *ESA*.

RECOMMENDATION 6.3

Migrant workers should be able to make claims under the *ESA* when conditions of the employment contract have been reduced or not complied with.

RECOMMENDATION 6.4

The *ESA* should be amended to allow seasonal migrant workers access to termination and severance pay recognizing their years of service and the continuity of an employment relationship with the same employer.

Migrant workers should be considered to be on a temporary lay-off between their yearly contracts with the same employer.

RECOMMENDATION 6.5

Extend time limits on *ESA* claims filed by migrant workers to five years.

Fair Wages

RECOMMENDATION 7.1

Raise the minimum wage to \$15 per hour in 2015.

RECOMMENDATION 7.2

Repeal occupational exemptions to minimum wage.

RECOMMENDATION 7.3

Repeal liquor servers minimum wage.

RECOMMENDATION 7.4

Repeal student minimum wage.