



Fair Wage Policy
Submission to the Ministry of Labour
by
The Interfaith Social Assistance Reform Coalition (ISARC)

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INTRODUCTION

The Interfaith Social Assistance Reform Coalition (ISARC) welcomes this opportunity to have a voice in the re-invigoration of Ontario's Fair Wage Policy.

Our Coalition represents the Anglican Diocese of Toronto, the Anglican Diocese of Niagara, the Anglican Provincial Synod of Ontario, the Assembly of Catholic Bishops of Ontario, the Canadian Unitarian Council, Catholic Charities of the Archdiocese of Toronto, Dicle Islamic Society, the Canadian Council of Imams, the Council of Canadian Hindus, the Eastern Synod of the Evangelical Lutheran Church in Canada, the Western Ontario District of the Pentecostal Assemblies of Canada, the Islamic Humanitarian Service, Mennonite Central Committee Ontario, North American Muslim Foundation, the Presbyterian Church in Canada, the Redemptorists in Canada, the Society of St. Vincent de Paul, the Toronto Board of Rabbis, and the United Church of Canada.

We are particularly interested in this issue for three key reasons. First, because as people of faith, we believe that every human being has value and dignity, and thus our public policies and employment/labour relations standards must reflect this belief in the value of every human being. Secondly, for approximately 30 years we have advocated for measures to reduce poverty in Ontario, and we are deeply concerned about current employment practices that are deepening poverty, uncertainty and stress for tens of thousands of Ontario workers and their families. Thirdly, the government has committed itself to poverty reduction and to fair treatment of workers. The Government has a leadership role to play in achieving this objective, both as being a model employer itself and in ensuring that all contracts it enters into with others as well as such contracts entered into by organizations that are part of the broader public sector to supply goods or services to the public, will require the contracted employers to also provide their employees with proper working conditions.

The saying, that it is better to teach a person to fish instead of just giving a person a fish, also inspires our call for stronger measures to protect vulnerable workers. Maimonides, the medieval Jewish philosopher, had a hierarchy of ways of giving charity and at the top is the directive to help make the recipient self-sufficient so that aid would no longer be necessary. We know that a significant segment of the poor are working poor. These are people who already have jobs but are still incapable of supporting themselves and their families. Our goal in this consultation

process is to identify measures that the government can take to strengthen employment standards and to provide meaningful access to collective bargaining above and beyond what results from the Changing Workplace Review. While it is appropriate to set a floor below which no employer should go in setting workplace standards for its employees, the government itself and agencies that are part of the broader public sector and those that it contracts with have a duty to model best practices and to set goals for the rest of the business community to reach for.

Similar mandates can be found in the beliefs of ISARC'S other faith communities. For Muslims, the Qur'an affirms that the socio-economic welfare of the individual and of society depends on the degree of justice and equity in the distribution patterns of income and wealth. The poor also have a right to the wealth of the nation and the community (The Qur'an 51:19). Muslims are obligated to support and advocate for the needy, because failing to uphold that duty would be tantamount to the rejection of faith (The Qur'an 107:1-3). Christians are inspired by the biblical mandate to "lighten the burden of those who work for you. Let the oppressed go free." (Isaiah 58:6). Other biblical texts reinforce this call to justice for all, including a warning to rich oppressors who cheat labourers out of their wages (James 5:4).

Catholic social teaching has an important insight to offer here. Pope St. John Paul II begins his 1981 document on human work with the observation that "only human beings work". In a way, being a worker defines the human person. This truth is reflected in the Book of Genesis where humans are spoken of as being created "in the image of God" so that they can carry out a role for God, acting as managers of God's creation. Hence the words: "Let us make humankind in our image, according to our likeness [so that they can] have dominion over the fish of the sea . . ." (Genesis 1:26). This is why humans should be seen as having a **right** to employment, and indeed employment in which they can feel they are **truly contributing to the common good**. It is in this sense that Catholic teaching views human work not simply as a job (a purely economic term) but as a vocation.

As faith leaders we see firsthand the stress experienced by workers who are juggling more than one part-time job. Even those with full-time jobs are not immune from these stresses. Too many of our congregants rely on food banks, despite working long hours. They worry about not spending quality time with their children, care for their own parents or being unable to participate in community activities. The parents' struggle for paying the bills and putting proper food on the table creates unhealthy and unnecessary family strife.

Increasingly, scheduling constraints and economic necessity are preventing our congregants from attending their houses of worship. Parents say they are anxious that their children are not finding full-time decent paying jobs, especially ones for which they have trained, and end up moving back home. Decisions to get married or start families are being postponed.

Background

The original fair wage policy for Ontario was created by legislation and covered any entity receiving a government grant, loan, or subsidy. Wage schedules were dealt with through regulations. In more recent times the Fair Wage Policy was addressed by the government's regulatory authority through an Order-in-Council (OIC).

The most recent update to the OIC was in the spring of 1995. It covered several subsectors of the construction industry, some types of building services and printing contracts. It also required the MOL to update the wage rates in Fair Wage Schedules on an annual basis. In the fall of 1995 the new conservative government amended the OIC deleting the annual updates and removed printing contracts from the policy. In 2007, the Ontario Government commissioned an independent review of Ontario's Fair Wage Policy. The report was submitted to the government in 2008 but was not released to the public and no action was taken on the Fair Wage Policy.

Current Day

On February 21, 2017, the Ministry of Labour (MOL) issued a press release announcing that they would seek public input into updating Ontario's Fair Wage Policy.

The press release states, "The review of the Fair Wage Policy is consistent with work being done by the Changing Workplace Review, especially in the building services sector, where workplace issues around precarious employment are prominent. Ensuring workers receive fair wages is part of our plan to create jobs, grow our economy and help people in their everyday lives."

The MOL held an initial set of consultation meetings in June, 2017. While ISARC was not invited to participate in that initial round, we welcome the opportunity to make submissions in advance of the September 29, 2017 deadline.

Context

Many types of work that previously were performed by government employees are now contracted out. Those jobs were decent jobs paying living wages and providing important benefits including pensions. As the work is contracted out and with increased competition in this market, wages have been ratcheted down and benefits have been cut back or have been eliminated altogether. Most consequential of the cutback in benefits has been pensions.

While even in the private sector the norm used to be full-time permanent jobs, the new normal is part-time, temporary, casual and agency jobs. This has led to such precarity in work that the Government established the Changing Workplace Review and is now responding to the submissions received through that review in the form of Bill 148 which includes limited measures to reduce the incentive of employers to restrict their full-time staffing complement. Contingent work however is not only prejudicial for many workers, it is prejudicial for the recipients of those services and for the efficiency of the operation of the businesses providing those services.

An increasing proportion of part-time workers are involuntary, preferring instead full-time employment. Increases in the proportion of work performed by part-timers decreases the continuity of the services provided by them, increasing the chances of matters falling through the cracks. The higher rate of turnover of part-time staff who are looking for fulltime work increases recruitment and training costs for employers and lowers productivity.

Impacts of Precarious and Low Wage Work

The impacts on workers and families of workers stuck in low wage and precarious work has been studied and is well documented. The World Health Organization has identified the global dominance of precarious work as a significant contributor to “poor health and health inequities. There are financial costs to provincial and municipal government that

can be tied directly to poverty. There are also costs to society that cannot be measured in dollars.

Most importantly is the human toll on the workers, their families and their children. Many of these costs were contained in a 2008 report that the Ontario government cited as part of the economic rationale for developing their poverty reduction strategy. Workers in precarious employment in low income households are more likely to report anxiety about employment. This interferes with personal and family life as they are more likely to find it difficult to make ends meet or to run out of money to buy food. These households are more likely to have problems buying school supplies, paying for school trips, and financing their children's activities outside of school. This is a barrier to children succeeding in school and living up to their potential in life.

Given this background, we now set out the changes we submit are required in order for the Policy to achieve its objectives.

Coverage

Public policy in Ontario mandates that parties should not be able to avoid their basic obligations by contracting out of them. For this reason parties are not allowed to contract out of human rights obligations set out in the Human Rights Code. Employers are not allowed to enter into contracts with employees that undercut employment standards except as specifically permitted by that Act. Under the Labour Relations Act employers cannot infringe on the rights of workers by selling all or part of their business to another operator. On the same reasoning, the Government should not be permitted to escape its responsibility to be a model employer by contracting out the provision of goods or services to another entity that has unsatisfactory working conditions, even if those conditions are superior to those set out in the Employment Standards Act and the Labour Relations Act.

The Fair Wage policy historically covered sectors of the economy where the government had a history of contracting out the provision of goods and services. In 1995 the list was narrowed to remove one of those sectors. However both before 1995 and subsequently, the government has contracted out the provision of goods and services in more and more sectors. If the Fair Wage policy is to be restored to its original intended scope and go beyond that, to ensure that the Government continues to be a model employer whether directly or through its contracts with others to all companies receiving contracts to provide the public with goods and services, then the scope of the Fair Wage policy must be expanded significantly.

We recommend that the Fair Wage policy be extended to cover all companies receiving contracts to provide any good or service to the public. This includes companies contracting directly with the provincial government or any part of the broader public sector, whether directly or through P3s or other alternative financing mechanisms. The policy should also apply to all subcontractors all the way down the supply chain to include the ultimate provider of the good or service.

Bill 148

Implicit in the concept of being a model Employer is the expectation that the minimums set out in legislation for all employers will be observed by the model Employer. Thus as a starting point, the Fair Wage policy should oblige those employers governed by it to comply with the requirements of Bill 148. However model employers should go beyond these legal minimums.

We therefore propose that the Fair Wage policy oblige employers covered by it to also comply with those proposals to enhance Bill 148, that are ultimately not accepted by the Legislature as appropriate to be enacted as a minimum standard for other employers.

The rest of our submission will focus on a few highlights of enhancements being sought through the Bill 148 process, but those specifics are not intended to limit the scope of enhanced obligation that should apply to employers governed by the Fair Wage policy.

Workers covered

If Bill 148 does not include in the definition of employee, persons who meet the definition of “dependent contractor” as set out in the Labour Relations Act, then this enhanced definition of employee should be included in the Fair Wage Policy.

Wages

The wage set for any sector or classification should be at least 90% of the average unionized wage for that sector or classification in Ontario, provided that the result is at least \$1 an hour above the minimum wage. Should that not be the case, then the wage should be 100% of the average unionized wage for that sector or classification in Ontario. The wage schedules should be adjusted annually to reflect changes in the average unionized wage for that sector or classification.

Other Employment Standards

1. Equal Pay – Companies covered by the policy should be obliged to amend to the extent necessary their pay practices to provide equal pay for work of equal value regardless of employment status, including the use of proportional and proxy approaches from Pay Equity Act. The proxy comparator, should that be necessary, should be the equivalent classification within the Ministry that entered into the contract with the Company, and if there is no such classification, then the highest compensated equivalent classification in any other Ministry. This approach is necessary especially if Bill 148 exempts employers from this obligation where there are differences in the details of the duties performed by workers sharing the same or similar classifications depending on whether they are permanently full-time or not. Any other exemptions within Bill 148 allowing for the non application of equal pay should not be available to companies covered by the policy.
2. Equal pay – The Policy should require that companies covered by it, use a total compensation approach. Thus the compensation provided to part-timers etc should include the full value of insured benefits provided to full-time permanent employees. For clarity paying a nominal amount in lieu of such benefits is insufficient.
3. Personal Emergency Leave – Bill 148 as it stands only provides for pay for the first two days annually. Model employers should not adopt employment practices that would result in employees feeling coerced to come into work even though they are sick and possibly infectious. Thus the Policy should provide that all ten PEL days should be paid.
4. Overtime – The work week has been shrinking and the prior norm of 8 hour days 5 times a week has been so standard that the policy should require payment of overtime at time and one half after 40 hours each week or at most 80 hours bi-weekly.
5. Bill 148 protects a number of inferior provisions in collective agreements from immediate coverage by the new statutory minimum standards. The Policy

should provide that in any sector where there are a range of provisions in collective agreements in relation to the new minimum statutory standards subject to inferior grand-parenting, some below the minimum standard and some equal to or above the minimum standard, then the Policy should remove the applicability of the grand-parenting provision.

6. Just Cause for Discipline - Any employment standards policy needs to have an effective enforcement mechanism. One essential element should allow for employees themselves to either advocate directly to their employer or at least to seek the assistance of the Ministry of Labour's staff. However very few complaints are ever submitted by active employees because of their fear of Employer retaliation. That fear can be managed if the Employer was to have its right to impose discipline limited to cases where it establishes just cause. This limitation applies to all employers under federal jurisdiction and there is no reason it should not apply to companies covered by this policy.
7. Temporary Foreign Workers – The Policy should provide that Employers should be prohibited from reporting to the appropriate agency that granted the permit for employing that foreign worker, the fact that the worker was discharged until after the discharge is upheld or the worker fails to challenge the discharge in a timely fashion.

Other recommended enforcement measures are set out below

Hiring Practices

Companies governed by this Policy should be obliged to make special efforts to hire persons from the locale where the worksite will be and to offer such persons reasonable training to enable them to effectively meet the requirements of the job.

Companies subject to the Policy using temporary help agencies to supply a portion of their labour needs should be limited to securing no more than 5% of the hours from all such sources combined. Companies using temporary help agencies should be jointly

and severally liable with those agencies to meet the obligations to such workers. When work within a classification done by employees provided by a Temporary Help Agency exceeds 1000 hours in any consecutive 6 month period, the company shall be obliged to create a full-time position and transfer the work from the Temporary Help Agency to the newly created position. Persons supplied by Temporary Help Agencies working in an enterprise for more than 90 days shall be offered direct employment by the enterprise if the work in the enterprise being done by that person continues beyond the 90 days.

Labour Relations measures

1. Certification process – Companies contracting with the democratic representatives of the public should be open to dealing with the chosen representatives of their workforce in relation to working conditions. The Policy should oblige companies that are subject to it, to grant voluntary recognition to an applicant union which demonstrates, to the OLRB by card check evidence, at least 55% membership support and where the membership evidence is less than 55% but at least 40% support, to remain neutral during the certification vote. If the latter obligation is felt to infringe employer's rights of freedom of speech, then at least the Policy should oblige companies subject to it, to give the applicant union equal access to the employees, where the employer makes use of its freedom of speech
2. Employee Lists – The Policy should oblige companies subject to it to grant applicant unions access to employee lists where at least 10% membership support is demonstrated. The Policy should provide that the list the Union is given access to includes the home addresses, classification, employment status and work location etc. The list should be as user friendly to applicant unions as the electoral list is to persons seeking to run for public office.
3. First Contract Arbitration – The policy should oblige companies subject to it to agree to voluntary arbitration if requested by union where no agreement is reached within 90 days of notice to bargain or within 10 days following the issuance of the “no board”. The working environment will be more hospitable to constructive relationships between workers and their employers if the workers don't have to establish “fault” on the side of the Employer in order to access arbitration to resolve their first contract.

Enforcement

Employers who win the bid who are found to have violated the policy should face financial penalties. The penalties should reflect the degree of the violation and increase for repeat violations. Repeat offenders with serious violations should also face disqualifications on bidding for future contracts. Where the violation involves reporting a discharge of a foreign worker, if the violation was willful then even a first violation should lead to disqualification from bidding on future contracts. Where the violation was not willful, a second violation should trigger this consequence.

The MOL employment standards officers should be responsible for determining if the policy is being adhered to with a report back loop to the government Ministry or broader public sector organization. Such officers should engage in proactive enforcement, especially on forms which are not unionized. A report should be filed annually in the Legislature identifying violators and remedial actions taken by the Government.

Details of the Policy should be posted in every worksite subject to it in English, French, and the language of the majority of the employees at that worksite.

Finally the policy should provide that if any portion of the broader public sector itself has a Fair Wage Policy with stronger worker protections, then the provisions with the stronger protections will apply to that sector.

CONCLUSION

Economic inequality in Ontario is growing and is bad for the social fabric and the productivity of the province. The plight of Ontario's contract, temporary and part-time workers especially cries out for action. Bill 148 when enacted will provide an important first step. However companies providing goods and services to the public under contract with the government and or under contract with any agency part of the broader public sector have a duty to adhere to higher standards than the bare minimum. The government has a duty to ensure that it, as well as the broader public sector, contract only with firms who adhere to standards above the bare minimum. Modernizing the Fair Wage Policy will bring greater justice to workers employed by such companies and will highlight these companies as a model for others. This combination of the enhanced Fair Wage Policy and Bill 148 will to make meaningful progress toward the eventual achievement of a true Fair Workplaces containing Better Jobs Act.