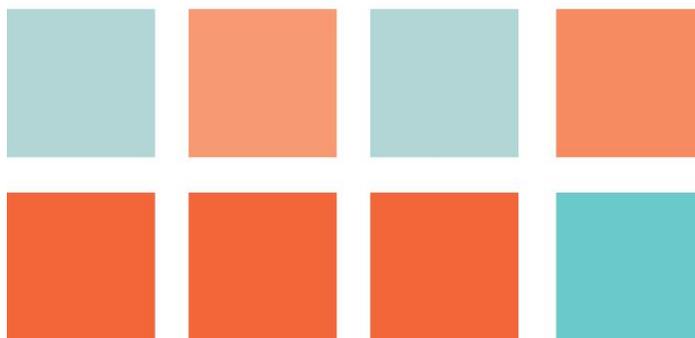


**RNAO's Response to the Interim Report of the
Changing Workplaces Review**

Submission to the Ministry of Labour
October 21, 2016



The Registered Nurses' Association of Ontario (RNAO) is the professional association representing registered nurses (RN), nurse practitioners (NP) and nursing students in all settings and roles across Ontario. RNAO congratulates the Special Advisors of the Changing Workplaces Review for their comprehensive interim report. This is the first step towards modernizing labour relations and employment standards legislation in light of changes in the workplace that weaken existing legislative protections for many people. RNAO's September 2015 submission to the Special Advisors¹ explained that the growth of precarious, contingent, casual and part-time employment was of concern because not only does it affect a significant number of RNs and NPs, but also because it adversely affects the well-being and health of increasing numbers of Ontarians. In this submission, RNAO will outline its own preferred path to a more stable workplace and workforce, guided by the options laid out in the interim report.

A. Growing Prevalence of Nonstandard and Precarious Employment

As health professionals, nurses are very concerned about the health implications of increasingly precarious employment on vulnerable workers. The interim report notes the broad nature of public concern: "for many there has been a long-standing trend of deteriorating working conditions for a growing number of workers." A growing and disproportionate share of the illness burden comes from people whose jobs don't provide them with an adequate living. While not all non-standard positions have low incomes, the greatest concern is about the precariously employed, who have disproportionately lower incomes and weaker conditions of employment. As the Law Commission of Ontario (LCO) writes, "Precarious work is characterized by job instability, lack of benefits, low wages and degree of control over the process. It may also involve greater potential for injury."² These are all well-known health hazards, and the government must act to minimize their effect. This is a large problem. As the LCO notes,

- "In Ontario, approximately 22% of jobs could be characterized as precarious work, defined as having low wages and at least two of three other features: no pension, no union and/or small firm size.
- "Part-time employees are more likely to be precariously employed than full-time employees: about 33% of part-time workers are in positions with low wages, no union and no pension, as compared to almost 9% of full-time employees.

In tandem with the decline in secure employment, only 39 per cent of Ontario employees are fully covered by the Employment Standards Act (ESA) (just 24 per cent if access to severance pay is included).³ Nurses know that stable employment with a living wage is an important determinant of health. The extent of precarious employment makes this a major health and health equity issue – one that demands an urgent and forceful public response. More resources will be required. For example, the Ministry of Labour currently performs about 2,500 proactive workplace inspections per year – less than one per cent of all workplaces. Given that about 76 per cent of inspections detect ESA violations, this suggests violations are widespread while the risk of getting caught is very low.⁴ Moreover, enforcement offers minimal deterrence: fines

levied for noncompliance were only issued in one percent of the cases; the fines are low, and 49 per cent of employers who were fined still did not pay.⁵

B. Non-standard Employment among Nurses

Nurses understand the challenges of nonstandard employment, as many have difficulty accessing full-time employment. The percentage of nurses holding multiple jobs is also high for all classes of nurse: in 2015, 15.2 per cent of RNs, 25.2 per cent of NPs, and 20.1 per cent of registered practical nurses (RPN) worked for at least two different employers at the same time. This disrupts continuity of care and care provider, which decreases quality and safety. A 'casualized' nursing workforce was noted as being a significant shortcoming during the SARS epidemic because multiple employment heightened the risk of infectious disease spread across facilities.

There is a good-news story in the case of precarious employment of nurses: decisive government action can make a huge difference. RNAO demanded drastic change beginning in the year 2000: a rise to 70 per cent full-time RN employment.^{6 7 8} The Ontario government responded with a series of measures to increase full-time nursing employment:

- The Minister of Health provided \$375 million to create 12,000 new nursing positions by March 2001.⁹
- In 2003, the Liberal Party promised to hire 8,000 more nurses,¹⁰ part of which came as a \$50 million commitment to add at least 800 full-time positions in hospitals.¹¹
- The 2003 Liberal platform also announced the goal of 70 per cent of RNs working full-time.¹²
- The 2007 Liberal platform promised to hire 9,000 more nurses and meet the goal of 70 per cent of nurses working full-time.¹³
- The Nursing Graduate Guarantee (NGG)¹⁴ (announced in February 2007)¹⁵ provides six months funding for temporary full-time positions for recent nursing graduates, and is responsible for dramatically increasing full-time employment for new grads. Employers are given incentives to bridge new nursing graduates from these temporary positions into permanent full-time positions.
- The Late Career Nurse Initiative (LCNI) is a retention strategy that allows nurses 55 years and older to spend 20 per cent of their time doing less physical nursing activities such as mentoring those new to the profession.

Combined, these actions reversed the downward trend in full-time nursing employment and the upward trend in casual nursing employment. As of 2015, the RN share was at 66.3 per cent, compared to 50.3 per cent in 1999. The casual share dropped from 7.4 per cent from 13.7 per cent. There is still room for improvement, as the 70 per cent target has yet to be met; and the current share of 66.3 per cent is lower than it was in 2012 when it was 68.1 per cent. In 2015, 81.5 per cent of NPs were employed full-time, compared to 56.5 per cent in 1999. However, this is down from an all-time high of 84.7 per cent in 2012. In 2015, 55.1 per cent of RPNs were

working full-time, compared to 47.4 per cent in 1999. However, this is lower than a peak of 61 per cent in 2011.

Nevertheless, the reversal in the negative trend was dramatic, and that suggests determined policy measures could also make a difference for the rest of the workforce experiencing precarious employment.

RNAO's 2015 submission to the Changing Workplaces Review detailed the benefits of full-time and permanent employment for nurses, as well as the gains in health outcomes and quality of nursing services. It is sound economic and health policy to promote permanent full-time employment for nurses. It would be equally sound to promote the same for anyone working in precarious employment. The task of reducing precarious employment of nurses is easier for government as it ultimately funds most nurses' services, but the government still has significant levers, such as the ESA and Labour Relations Act (LRA).

C. A Comprehensive Strategy for Precarious Employment

As is evident from the interim report, the scope and severity of precarious employment in Ontario is such that nothing less than a comprehensive strategy to deal with the problem is essential. The Changing Workplaces Review is a good start, as much of the pain caused by precarious employment could be addressed by extending the coverage of the ESA and the LRA* to all workers

**LRA - specifically, the right for all workers to organize if they choose to do so.*

While expanding the availability of the ESA and LRA would be a crucial step, that would not be the entire solution. It would not solve the lack of enough good jobs for people who want or need them. And it cannot convert industries predicated on precarious employment into providers of good jobs. The provincial government must have a complementary strategy to promote good jobs, as well as a stronger income support program to help those who aren't fortunate enough to obtain good jobs.

And that brings us to our view of what the ESA and LRA can or cannot do. It can and must set the minimum employment and labour relations standards necessary for a civilized society. That, in turn, will enhance the stability and security of employment, enhance the quality of work life and improve people's health.

We understand the political pressure being applied by some groups, but we ask that health be the government's primary criterion when reviewing the ESA and LRA. The onus ought to be on employers to demonstrate a compelling need for more flexibility than they would face in a strengthened ESA and LRA, in which case they must present measures that leave their workers no lesser off than they would have been without the additional flexibility. In any case, no amount of international competition can justify precarious work as a business strategy. So, if a strengthened ESA and LRA results in increased competitive pressure for a given industry, then

the government ought to focus on other ways of leveling the playing field for Ontario employers (such as border adjustments) to reduce the unfair advantage that outside competitors have from unfair labour practices. And government should develop a just transition strategy for workers in industries which are no longer economic.

D. Recommendations

We reiterate our workforce recommendations from our 2015 submission, amplifying them with details based on the interim report. We will focus on the ESA and we urge that all workers be given the full protection needed to promote security, health and well-being:

1. Develop and implement a plan (preferably via changes to the ESA) to deliver the same protections and benefits to workers in nonstandard employment as those in standard employment.
2. Cover all classes of worker and employers under the ESA without any exemptions. That would include younger workers, farm workers, liquor servers, residential care workers, workers with shorter tenure, workers employed through temporary help agencies, interns/trainees, Crown employees and managerial staff. Supporting recommendations include:
 - a. If current exemptions are to be reviewed rather than to be done away with as we prefer, then a commission must be struck and review all ESA exemptions. It must be guided by the principle of universality and fairness of minimum standards. Proponents of an exemption must make a compelling case for the exemption, and the proposing industry or business must provide equal or greater benefit to employees to compensate for exemptions granted.¹⁶
 - b. Expand the definition of employee to include dependent contractors.¹⁷
3. Strengthen the ESA by implementing measures that:
 - a. Enhance the predictability of scheduling, including requiring as much advanced notice be given to employees as possible;
 - b. Appropriately compensating employees for last-minute changes to scheduling;
 - c. Support the increased availability of full-time employment;
 - d. Ensure access to fair vacation entitlement;
 - e. Enable all employees to access 10 days of unpaid personal emergency leave (PEL) by removing the current exemption within the ESA that limits it to a 50 employee threshold.¹⁸
 - f. Add a requirement to the ESA to enable all employees to get a minimum of one hours of paid sick time for every 35 hours worked, up to 52 hours of paid sick time per year (unless, or course, the employer selects a higher limit). This works out to about seven paid sick days per year for a full time employee.¹⁹
 - g. Strengthen protection around termination of employment and enhance the accessibility of severance pay.

4. Implement a proactive deterrence model of enforcement that does not tolerate illegal activities and compels employers to comply with the ESA. Supporting recommendations include:²⁰
 - a. Require mandatory ESA awareness training for newly registered business owners and managers.
 - b. Make ESA education part of Ontario’s high school curriculum.
 - c. Proactively enforce the ESA.
 - d. Strengthen the ESA claim process with the following recommendations:²¹
 - i. Establish a formal anonymous and third-party complaint process, with anti-reprisal protection and right of appeal if the Ministry of Labour does not proceed with an inspection after such complaints.
 - ii. Provide legal support for workers to file ESA claims, during applications for review,²² and during the settlement process.²³
 - iii. Prohibit employers of Temporary Foreign Workers from forcing deportation / “repatriation” of an employee who has filed an ESA complaint.
 - iv. Greatly strengthen the inadequate penalty system:²⁴
 - Establish a systematic and transparent deterrence model of penalties.
 - Increase fines.
5. Build capacity for proactive enforcement of ESA, including increased staffing of enforcement teams and partnering with organizations working with precarious workers.

Conclusion

RNAO applauds the Ontario government for striking this Changing Workplaces Review. This responds to the urgent need to address the growing prevalence of precarious employment. RNs, NPs and nursing students are very concerned about the resulting health and social problems. RNAO also applauds the Special Advisors for the careful work compiling the many perspectives on precarious employment. We urge the government to use the right set of tools to address the root problems. The ESA and the LRA must protect health, dignity, and decency by ensuring fair and strong employment and labour relations standards. Of course, many employers face an internationally competitive environment, and high standards may make competition more difficult when competitors operate other jurisdictions with low standards. But the task for government is not to engage in a race to the bottom. The task is to provide a productive environment with a healthy, well-educated workforce and that levels the competitive playing field without lowering standards. Ontario must find ways to continue raising the bar, and improvements to the ESA and LRA are a very good start.

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¹⁷ Ibid, p. 9.

¹⁸ Registered Nurses' Association of Ontario (2016). RNAO Submission on Personal Emergency Leave. Toronto: Author.

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²⁰ Ibid. p. 51.

²¹ Ibid. p. 54.

²² Ibid. p. 69.

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