

WORKING PAPER 6: HOW TO PROVIDE LEAVE BENEFITS*†

1. Key challenge & overview

People in precarious employment are less likely to have access to benefits, including leave benefits.

Leave benefits are the ability to take time off from work. They entail the right to take off work (job-protected leave) and the ability to get paid during time off of work (income support). Those workers who are covered by employment standards legislation have the right to take off work under certain conditions. Those workers who are eligible for Employment Insurance Special Benefits or who have employer support, can get paid while taking time off work under certain conditions. **Policy options focus on either increasing access to job-protected leave or to income support during leave.**

2. Evidence from PEPSO

A lack of employer-sponsored benefits, including employer-sponsored leave, is a key challenge for workers in precarious employment. PEPSO's *It's More than Poverty* report[‡] found that 11% of workers in precarious jobs were paid if they missed a day's work, compared to 100% of workers in secure jobs. Access to leave plays an important role in helping workers to establish a work-life balance. Not having access to job-protected leave, or paid time off, can compromise a household's ability to cope with unanticipated events, such as a child's illness, or a death in the family. This contributes to the higher levels of stress and anxiety reported in *It's More than Poverty*.

3. Context/current situation

Time off work has two features: the right to take time off (**job-protected leave**) and whether or not the time off is paid (**income support**). The types of leave vary from sick leave to vacations and holiday leave. Some workers covered by employment standards are entitled to a range of job-protected leave and may have access to income support through Employment Insurance. This working paper focuses on how to improve benefits for workers who are covered by employment standards. A separate working paper will study policy options that address the exclusion of precarious workers from employment standards because they are misclassified as "independent contractors."

Income support for other types of leave, like maternity leave, is available to eligible workers through Employment Insurance (EI) Special Benefits. Those in precarious employment, however, are less likely to meet the qualifying number of hours (600)¹ to receive EI due to periodic unemployment, as well as unexpected scheduling changes. For low-wage earners, the EI wage replacement rate of 55% of average weekly earnings is not adequate.

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† This Policy Options Working Paper is one in a series of 16 working papers that explore the range of policy options that have been proposed to reduce or mitigate the impacts of precarious employment. Each of these papers must be read in tandem with the paper titled "PEPSO Policy Options Working Papers: Introduction". The full reference list is contained in a separate bibliography document.

‡ PEPSO's *It's More than Poverty* report refers to the report that was published in February 2013 that was based on the main survey conducted by PEPSO. In these working papers this report will be called the PEPSO report or the PEPSO survey. This is only appropriate for these working papers as there are other PEPSO reports that will be published by the six case studies.

Employer-sponsored benefit plans are a form of non-wage compensation used to recruit and retain workers and often include time off. Employers are prohibited from discriminating on the basis of age, sex and marital status when they offer benefit packages **There is no employment standard, however, that prohibits employers from discriminating on the basis of employment status** (e.g. discriminating on the basis of part-time or contract status). Workers in precarious employment are often not included in workplace benefit plans. The *ESA* entitles some workers to time off, some of it paid, but it's worth noting that workplace plans often extend these benefits and provide for additional types of time off.² For example, employers may provide short-term or long-term disability benefits.³

3.1 Right to time off

A worker's entitlement to a minimum standard of time off is stipulated by the *ESA*. Workers covered by employment standards have a right to a range of unpaid job-protected leave provisions and days off.

- A worker can take up to 17 weeks of **Pregnancy Leave**, as long as she was hired at least 13 weeks before the baby's due date.⁴
- New parents can each take between 35 to 37 weeks of **Parental Leave**, provided that they were hired at least 13 weeks before the leave starts.⁵
- Workers are entitled to take **Family Medical Leave** for the palliative care of a family member. A maximum of 8 weeks in a 26-week period is available and a doctor must confirm the family member's condition.⁶
- Workers are entitled to a maximum of 10 days off in a calendar year that can be used for illness or urgent, unexpected events that affect a worker or their family. This **Personal Emergency Leave** is only mandated for workplaces with 50 or more employees,⁷ which means that 1.7 million workers in Ontario do not have access to this leave.⁸

Ontario *Bill 21, Employment Standards Amendment Act (Leaves to Help Families), 2014* received Royal Assent on April 29, 2014. This bill extends leave beyond organ donor leave and personal emergency leave to include family caregiver leave, critically ill child care leave, and crime-related child death or disappearance leave.⁹

Employees who are misclassified as independent contractors do not have access to this minimum standard of job-protected leave. While workers have legal rights to public holidays and vacation time, these are the most common type of employer violations. Vacation and public holiday violations were among the top five complaints filed at the Ontario Ministry of Labour by workers in 2012/13 and were the top two violations detected in proactive inspections that same year.¹⁰

Provisions for time off in employer-sponsored benefit plans are at the discretion of the employer, but can be influenced by the presence of a collective agreement and the *ESA*. Workplace benefit plans can extend the duration of statutory leave provisions. They may also entitle the worker to additional time off, such as leave for training.¹¹ If an employer does offer a benefit plan, employment standards stipulate that workers on leave are entitled to participate in other elements of their plan (such as extended health and pension income benefits), to earn credit for length of service and must be given their old job back when they return.¹²

3.2 Paid time off

The *Employment Standards Act, 2000 (ESA)*, or the Canada Labour Code (CLC), legislates pay for some time off, such as statutory holidays and annual vacation.[§] Specific employment standard leave provisions can be taken in sync with Employment Insurance (EI) Special Benefits, and therefore offer workers income support. Paid time off

[§] The Canada Labour Code (CLC) applies to workers in federally regulated industries. In the GTHA these are most likely to be workers in banking, communications and telecommunications, as well as the federal public service and its agencies. The CLC covers 6% of non-public administration jobs in Canada (Arthurs (Human Resources and Skills Development Canada), 2006), as such, policy options included in this briefing focus on the *ESA*. When relevant to the *ESA*, proposals specific to the CLC are included.

work provided by employers, such as paid maternity leave top ups, can supplement these provisions. Paid sick days, however, are an example of a workplace benefit that is not available to those who are outside the scope of employment standards legislation.** The *ESA* stipulates a minimum standard of paid time off work in the form of:

- **Statutory holidays:** Ontario has nine statutory holidays that workers are entitled to as paid days off. Working on a statutory holiday entitles workers to an earnings premium.
- **Annual vacation time.** Workers also have a right to annual vacation time. After 12 months of service, the minimum standard entitlement for vacation time is two weeks, or 4% of wages earned during the vacation time entitlement period. This differs from other provinces. For example, Quebec entitles workers to 1 day of vacation per full month of service for the first year (4% of wages).¹³ Workers who have worked for 5 years and over, uninterrupted, are entitled to 3 continuous weeks of leave (6% of wages).¹⁴ In Saskatchewan, workers are entitled to 3 weeks of vacation pay for every year of service and 4 weeks after 10 years of service.¹⁵ Employment Insurance (EI) Special Benefits offer some income replacement to workers who need to take extended time off work. The EI wage replacement rate for regular and special benefits is 55% of the average insurable weekly earnings in the qualifying period.
- **Maternity benefits** can be claimed for a maximum of 15 weeks, though certain types of income earned during maternity leave will be deducted from the benefit. However, employer top ups are not deducted.
- **Parental benefits** are payable for a maximum of 35 weeks and can be shared between parents. Certain types of income earned during parental leave will be deducted if higher than \$50/week or 25% of the weekly benefit rate.
- **Sickness benefits** are payable to claimants who demonstrate that their income has been reduced by 40% due to illness. These benefits are payable for a maximum of 15 weeks.
- **Compassionate Care Benefits** may be shared among family members. They are payable for a maximum of 6 weeks in a 26 week period. Claimants must demonstrate that their regular earnings have decreased by more than 40%.

As with regular EI benefits, there is a two-week waiting period before special benefit payments are made. Employers and employees contribute to the EI fund through mandatory payroll deductions.

However, benefit coverage for special benefits is not universal. For example, misclassification of employees as independent contractors, high qualifying hours (600),^{††} and definition of what constitutes 'family,'^{‡‡} leads to limitations in coverage. In addition, other groups may be technically eligible for benefits, but are sometimes or often barred from receiving these benefits. For example, temporary foreign workers pay into EI,¹⁶ but do not always receive special benefits.¹⁷

In January 2010, the federal government launched the EI Program for Self-Employed People. Upon registration, the self-employed pay premiums (equivalent to the employee premium) and after 12 months, can claim special benefits. As of March 2012, less than 0.5% of the 2.7 million self-employed Canadians had signed up.¹⁸

Employer provided leave can stipulate wage replacement rates that are higher than those mandated through the *ESA* or EI Special Benefits, as well as offer income support for non-statutory leave. Common improvements to paid time off through a workplace benefit plan include paid sick days, or a top up of some EI Special Benefits.^{§§} Top-ups are paid by the employer, and are considered by the federal government to be Supplemental Unemployment Benefits.

** For more on who is outside the scope of employment standards legislation, see working paper # 10 on employment standards coverage and awareness.

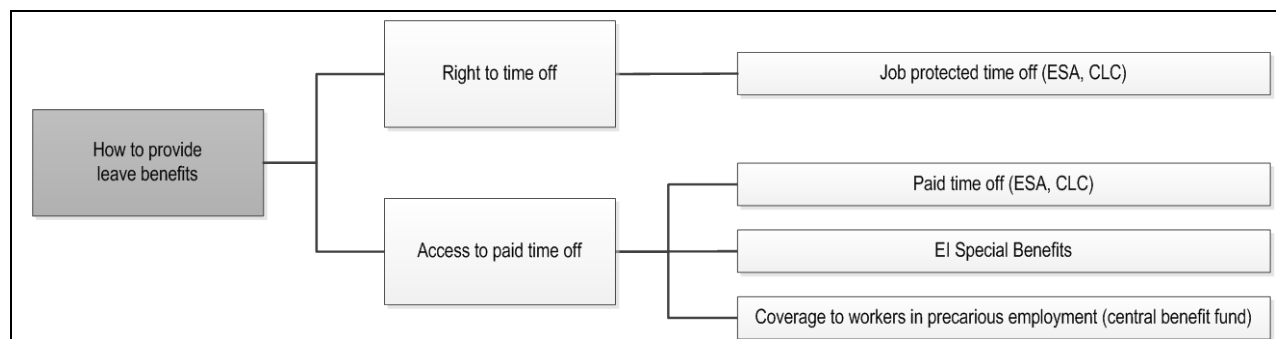
†† In Contrast to EI regular benefits, EI special benefits have a standard qualifying hours threshold for all Canadians that pay into EI.

‡‡ The definition of family in the Employment Insurance Special Benefits program is sometimes cited as excluding people that an individual identifies as family.

§§ In 2008, one in 5 mothers reported receiving a top up to her EI maternity benefits through her employer. (Statistics Canada, 2010)

Individuals in precarious employment often do not have access to employer sponsored benefit packages.¹⁹ These workers must rely on employment regulations and EI for job protection and income support when they need time off. However, some *ESA* leave provisions are only available to workers in larger enterprises and others have strict eligibility requirements. Furthermore, accumulating enough qualifying hours for EI can be difficult, and the benefit duration and rate are often inadequate. Though the *ESA* and EI harmonize for some types of leave, there is a noticeable gap as Personal Emergency Leave does not have a matching income support benefit through EI. Thus, workers in precarious jobs do not always have access to the job-protected time off, or income support necessary to cope with unexpected events.

4. Policy options



In general, policy recommendations suggest a range of ways to provide workers with **more job-protected leave**, or how to improve **access to paid time off**. Many of these options would improve leave policies universally, which could include those workers in precarious employment.

4.1 Right to time off

Increasing job-protected time off through the *ESA* is a focus of some policy options. These include:

- **Legislating parity** to ensure that all workers, regardless of their employment status, have the same access to benefits.²⁰ In most European Union countries, legislation stipulates temp agency workers must be provided with the same workplace and employment conditions as other employees performing comparable work.²¹
- Implementing a minimum floor of benefits in order to reduce the cost incentive of hiring part-time over full-time workers.²²
- **Reducing restrictions to time off** to increase workers' access to leave. This can include expanding Family Medical Leave to workers whose family member is ill, though not in a palliative state,^{*** 23} and extending Personal Emergency Leave provisions to workplaces with fewer than 50 employees.²⁴
- **Introducing new categories of job-protected leave** in order to attend training or education.²⁵
- **Establishing bereavement as a category of leave** is another option.^{††† 26}

One proposal also focuses on job-protected time off through the *CLC*:

- Expanding Family Medical Leave to workers whose family member is ill, though not in a palliative state²⁷

*** This option was proposed for the Canada Labour Code (CLC) but is equally relevant to the *ESA*.

††† The CLC provides bereavement leave for workers who have 3 months of continuous service. They are entitled to the 3 calendar days following a death in the family, the first of which is paid if it falls on a work day. Under the *ESA*, bereavement is included in Personal Emergency Leave.

4.2 Access to paid time off

Policy options for paid time off address provisions through the *ESA*, *CLC*, and *EI* and suggest new methods to deliver them to workers in precarious jobs. The focus of some policy options is to provide **more paid time off** for workers who do not have a workplace benefit plan, whereas others seek to **increase access to paid time off** for workers in precarious jobs.

Some policy options seek to **increase** the amount of **paid time off** workers can access through the *ESA* or *CLC* by:

- **Increasing annual paid vacation** under the *ESA* from the current minimum of 2 weeks,²⁸ which would assist only those who have been working for their employer for more than one year.
- **Adding paid sick leave** to the *ESA*²⁹ or paying all workers for days taken as Personal Emergency Leave.³⁰ From Denmark comes the suggestion that temporary workers qualify for paid sick leave if they have worked for 72 hours in the past 8 weeks.³¹ Another idea comes from Oregon, where the state legislature is considering a bill that would allow workers to earn up to one hour of sick time for every 30 hours worked, to a maximum of seven days of paid sick time a year.³² In New York City, two cities in New Jersey, and other municipalities in the U.S., employers are required to give workers paid sick time leave and paid caregiver leave.³³
- **Introducing a 10th paid holiday under the CLC** at a workers' discretion to acknowledge the cultural diversity of the workforce.³⁴ This is an option that could be applied to the *ESA* as well.

Policy options seek to **expand EI Special Benefits** in order to increase access and provide more benefit coverage to workers. These include:

- **Increasing the duration** of the benefit period for Compassionate Care,³⁵ or Sickness Benefits,³⁶ Increases ranging from 12 to 26 weeks are suggested.
- **Increasing the amount** of the benefit by raising the weekly *EI* wage replacement rate.³⁷ Increases ranging from 60%-75% are suggested.
- **Eliminating the two-week waiting period** for special benefits to ensure workers have timely access to benefits,³⁸ or **establishing a supplement** or pre-payment plan that offers income support while claimants wait for their benefits to begin.³⁹
- **Reducing the number of qualifying hours** for all *EI* benefit programs to increase access for workers in precarious employment.⁴⁰
- **Introducing new categories of benefits** to include leave for training or education.⁴¹ Encouraging employers to offer paid training leaves by **reducing their EI premiums**.⁴²

Some policy options present ideas for new methods of delivering benefits that would **extend coverage** to workers in precarious jobs. These include:

- **Introducing leisure grants** that allow workers, on a rotating basis, to take time off.⁴³
- **Developing a central benefit fund** to which employers contribute sick leave and vacation pay for those in precarious employment. This fund would supplement provisions currently available to these workers.⁴⁴
- Ensuring that workers receive **compensation in lieu**, when proportional access to benefits is not possible due to the nature of the benefit.⁴⁵

5. Questions for discussion

1. Which policy options in this paper could have the most impact on the lives of those in precarious employment?

2. Which policy options in this paper can we realistically move forward on, given the current political, economic, and social climates?
3. Which policy options are missing from this paper, but require attention?

6. Endnotes

¹ Service Canada, 2013c

² Ontario Ministry of Labour, 2013a

³ Ontario Ministry of Labour, 2013a

⁴ Ontario Ministry of Labour, 2013g

⁵ Ontario Ministry of Labour, 2013g

⁶ Ontario Ministry of Labour, 2008

⁷ Ontario Ministry of Labour, 2009

⁸ Statistics Canada, 2014c

⁹ Legislative Assembly of Ontario, 2014

¹⁰ Ontario Ministry of Labour, 2014a

¹¹ Service Canada, 2014c

¹² Ontario Ministry of Labour, 2013a

¹³ Quebec Commission des Normes du Travail, 2013

¹⁴ Quebec Commission des Normes du Travail, 2013

¹⁵ Saskatchewan Labour Relations and Workplace Safety, 2014

¹⁶ Employment and Skills Development Canada, 2013a

¹⁷ Income Security Advocacy Centre & Niagara North Community Legal Assistance, 2013

¹⁸ CBC, 2013

¹⁹ PEPSO, 2013

²⁰ PEPSO, 2013; Workers' Action Centre & Employment Standards Work Group, 2005, 2007; NDP, 2013; ILO, 2011; Bernier, Vallee, & Jobin (Quebec Ministère du Travail), 2003

²¹ Workers' Action Centre & Parkdale Community Legal Services, 2008

²² Upjohn Institute, 2012

²³ Workers' Action Centre & Employment Standards Work Group, 2005; Arthurs (Human Resources and Skills Development Canada), 2006

²⁴ Law Commission of Ontario, 2012

²⁵ International Labour Organization, 2011a; Arthurs (Human Resources and Skills Development Canada), 2006

²⁶ Arthurs (Human Resources and Skills Development Canada), 2006

²⁷ Workers' Action Centre & Employment Standards Work Group, 2005; Arthurs (Human Resources and Skills Development Canada), 2006

²⁸ Access Alliance, 2011 with endorsement from Workers' Action Centre, Mennonite New Life Centre's Newcomer Advocacy Group, MISWAA, 2006; Workers' Action Centre, 2007; Arthurs (Human Resources and Skills Development Canada), 2006

²⁹ Workers' Action Centre, 2007

³⁰ Workers' Action Centre & Employment Standards Work Group, 2005, 2007; Pocock et al., 2004

³¹ Jackson, 2006

³² Institute for Women's Policy Research, 2013

³³ The Detroit News, 2014

³⁴ Workers' Action Centre & Employment Standards Work Group, 2005

³⁵ Workers' Action Centre, 2007; Canadian Centre for Policy Alternatives, 2008; NDP 2013

³⁶ Canadian Centre for Policy Alternatives, 2008

³⁷ Caledon Institute of Social Policy, 2008; Good Jobs for All, 2012 – 2013; Social Planning Toronto, 2009; Ng et al., 2013

³⁸ Mowat, 2011, Canadian Centre for Policy Alternatives, 2007; NDP 2013

³⁹ Lankin & Sheikh (Ministry of Community and Social Services), 2012

⁴⁰ Broadbent Institute, 2012; Caledon Institute of Social Policy, 2008; Access Alliance, 2011; Good Jobs for All, 2013; Canadian Centre for Policy Alternatives, 2007, 2013; Ng et al, 2013.

⁴¹ Jackson, 2006

⁴² Canadian Centre for Policy Alternatives, 2007

⁴³ Standing, 2011

⁴⁴ Lewchuk, Clarke, & De Wolff, 2011

⁴⁵ Bernier, Vallee, & Jobin (Quebec Ministere du Travail), 2003