Review of Bill 27: *Working for Workers Act, 2021*
Standing Committee on Social Policy

ONTARIO FEDERATION OF LABOUR

Ontario Federation of Labour Submission

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Introduction

The Ontario Federation of Labour (OFL) is disappointed by the content of Bill 27: *Working for Workers Act, 2021*. Contrary to the name of the Bill, it does little or nothing to provide meaningful protections for Ontario workers. While Bill 27 deals with areas of labour law where reforms are urgently needed and long overdue, its specific proposals lack the necessary enforcement and compliance mechanisms that would make the proposed changes effective. In some areas, such as the proposal to disburse “surplus” funds from the Workplace Safety and Insurance Board (WSIB) to employers, the changes represent a significant step backwards for Ontario workers and would worsen an already difficult situation for injured workers, in particular.

By contrast, the Bill appears to anticipate and assuage employers’ concerns about any increased expectation to improve conditions of work in Ontario by providing more mechanisms to avoid compliance with the proposed changes than to enforce it.

In general, the Bill falls significantly short of what Ontario workers have long been calling for and what would be required to provide meaningful and effective protections for them in a 21st-century work environment and in the context of the COVID-19 pandemic. Indeed, the Ontario Workforce Recovery Advisory Committee, which the Minister of Labour appointed in June 2021, did not include representation from any labour body or organization in Ontario and did not express the widely held and longstanding views of Ontario’s labour movement regarding labour law reform that could address the changing work environment and the impact of the pandemic on conditions of work.

Review of Schedule 1: *Employment Protection for Foreign Nationals Act, 2009*

There is significant overlap between the proposed changes in Schedules 1 and 2 with respect to increasing the regulation of temporary help agencies that recruit and hire migrant workers. In Schedule 1, Bill 27 attempts to address the widespread problem of illegal recruitment fees that recruiting agencies frequently charge migrant workers with the effect of impoverishing them and their families for many years after they have been hired. The experiences of migrant workers, along with the reality of their working conditions and lives in Ontario, have been highlighted throughout the course of the COVID-19 pandemic as the public became aware of the vastly inferior protections available to them and the resulting impact on their health and safety and on public health.

One step, among others, that Bill 27 proposes to prevent hiring agencies from charging illegal recruitment fees is to expand joint and several liability from the hiring agencies that charge the fees to other bodies and their directors down the recruitment supply chain, allowing workers to proceed against them in an effort to recover illegally charged fees. However, Bill 27 falls short of making this measure effective by failing to expand joint and several liability to employers that rely on hiring agencies and that drive the demand for temporary workers in the first place. The OFL shares concerns raised by the Workers' Action Centre, the Migrant Workers' Alliance for Change, and other organizations that Bill 27 must include concrete measures that transform the current business model for recruiting and hiring temporary workers.

The OFL recommends the expansion in Bill 27 of joint and several liability to employers that rely on recruiting agencies to recruit and hire temporary workers.

The OFL recommends the inclusion in Bill 27 of a mandatory licensing system that includes a registry of licensed recruiting agencies *as well as* a registry of employers that use them.

Review of Schedule 2: *Employment Standards Act, 2000*

One aspect of Bill 27 that has attracted widespread attention is in Schedule 2: the introduction of a requirement for employers with more than 25 employees to have a written policy about “disconnecting from work,” which the Bill defines as “not engaging in work-related communications, including emails, telephone calls, video calls or the sending or reviewing of other messages, so as to be free from the performance of work.” Like other proposed changes in the Bill, the urgent need for this one has been highlighted by, among other things, the impact of the COVID-19 pandemic, including the more widespread practice of working remotely and/or from home, and the ubiquity of mobile and computer use in many Ontario workplaces.

However, Bill 27 does more to raise workers’ expectations about disconnecting from work than it would do to satisfy them in practice, as a result of the Bill’s failure to include specific or defined criteria in the required policy and to enshrine the right to refuse overtime as a job-protected right. The OFL shares concerns raised by the Workers’ Action Centre and other organizations that the Bill’s requirement for employers to have a written policy about disconnecting from work, like other workplace requirements for policies that go largely unobserved or unenforced, will have little to no impact in making it easy or even possible for workers to disconnect from work.

The OFL recommends the inclusion in Bill 27 of a strong statutory right to refuse overtime, especially with respect to any employer expectations that workers must respond to and be available to respond to work-related communications via mobile or computer devices outside the normal hours of the workday and/or while at home.

The OFL recommends the inclusion in Bill 27 of strong protections for workers’ privacy and personal information and for employees’ rights to be free of employer or work-related monitoring, surveillance, and intrusion in their personal spaces and lives.

As in Schedule 1, Schedule 2 attempts to address the widespread problems of illegal recruitment fees charged by recruiting agencies and of their exploitation of migrant workers whose labour is required in a growing number of sectors in the Ontario economy: agriculture; fisheries and food supply; transportation; tourism; in-home care work for children, the elderly, and people with disabilities; food services; and more. The OFL shares the concern raised by the Workers’ Action Centre, the Migrant Workers’ Alliance for Change, and other organizations that Bill 27 must impose on recruiting agencies “[a]n effective and robust legislated licensing architecture [to] improve compliance with Ontario’s [*Employment Standards Act*, *Employment Protection for Foreign Nationals Act*, and *Occupational Health and Safety Act*],” but currently lacks the enforcement mechanisms and other measures required to achieve this end. Where mechanisms or measures do exist, they are insufficient or inconsequential such that employers have no incentive to use only properly licensed recruiting agencies.

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Compliance has a greater chance of success if recruiting agencies must pay a significant security deposit or surety as a condition of licensing, which could be set by regulation and increased as needed to ensure increasing rates of compliance. Similarly, in order for the Bill's deterrence measures to be effective, recruiting agencies must face significant fines or penalties for failing to operate with a license or for violating any other part of the licensing architecture. Employers must also face similar consequences for failing to use a properly licensed recruiting agency to recruit or hire temporary workers.

The OFL recommends the inclusion in Bill 27 of a security deposit or a surety as a condition of licensing recruiting agencies and that the amount be set at no less than $25,000.

The OFL recommends the inclusion in Bill 27 of a restriction that licenses may not be transferable or assignable (i.e., a new license must be obtained in the event of a change in ownership).

The OFL recommends the inclusion in Bill 27 of a minimum set fine of $15,000 for recruiting agencies that fail to operate with a license.

The OFL recommends the inclusion in Bill 27 of a minimum set fine of $15,000 for employers that fail to use, either directly or indirectly, a properly licensed recruiting agency.

The OFL recommends the inclusion in Bill 27 of a system for reporting complaints that allows workers to do so easily, anonymously, and without the threat of reprisal.

The OFL recommends the requirement in Bill 27 that the onus of proof, when processing complaints by workers, be reversed (i.e., recruiting agencies must prove that fees were not charged or paid).

Review of Schedule 3: *Fair Access to Regulated Professions and Compulsory Trades Act, 2006*

The OFL shares concerns raised by the Ontario Council of Agencies Serving Immigrants and other organizations that have identified the discriminatory ways that employers have used a demand or requirement for “Canadian experience” as a means to exclude workers based on their country of origin or employment and education history. Bill 27 begins to address these concerns by no longer requiring as a qualification for registration that a person’s experience be Canadian experience, but then limits its impact by allowing for numerous exemptions. Likewise, Bill 27 does not meet the widely held expectation among foreign-trained or -employed workers that their credentials will be recognized and they will be able to work in their fields in Ontario.

The OFL recommends the expansion in Bill 27 of Schedule 3 to include health-regulated professions.

The OFL recommends the inclusion in Bill 27 or in other bills of requirements for regulatory bodies to guarantee timely assessments and registrations and occupational licensing.

The OFL recommends further discussion of all relevant issues at tables that include regulators, educational and training institutions, employers, unions, refugee and immigrant service organizations, and impacted refugees and immigrants.

<u>Review of Schedule 4: *Ministry of Agriculture, Food and Rural Affairs Act*</u>

The OFL shares concerns raised by the Migrant Workers' Alliance for Change and other organizations about the expansion of the Ministry's powers under Bill 27 to collect "personal information," as defined by Section 38 of the *Freedom of Information and Protection of Privacy Act*, of migrant agricultural workers, but without explaining how the information would be collected, stored, used, protected, etc. or why the information is needed in the first place. In addition, nothing in Bill 27 accounts for the particular needs and concerns of migrant agricultural workers, especially their precarious and vulnerable immigration status, or takes steps to ensure their personal information is not shared with federal immigration bodies such as the Canada Border Services Agency.

The OFL recommends the removal from Bill 27 of Schedule 4.

Review of Schedule 5: *Occupational Health and Safety Act*

The pandemic has vastly increased the use of gig workers, especially platform delivery workers, and highlighted their appalling conditions of work. Their experience has been worsened by employer attempts to misclassify them and exempt them from the *Employment Standards Act*. One longstanding concern of these workers is their frequent inability to access washrooms during their long hours of work. While most workers may take for granted their easy access to washroom facilities in their workplaces or while performing their labour, many gig workers must work hours without any washroom access at all or prolong their hours of work without additional compensation in order to access a washroom.

Bill 27 attempts to address this issue by requiring employers to provide washroom access to workers who make deliveries to and/or from their places of business. However, the broad exemptions included in the Bill make it easy for employers to avoid compliance with this requirement. The effect would be to raise workers' expectations of their right to access a washroom while making deliveries, for example, but to empower employers to refuse access based on the Bill's overly broad and ill-defined exemptions.

The OFL recommends the removal from Bill 27 of these exemptions.

In addition, gig workers require a far more ambitious and comprehensive set of reforms that regulate their conditions of work, provide the same labour protections that other workers enjoy, and prevent employer carve-outs of their rights as workers under the *Employment Standards Act* and all other labour legislation.

The "Gig Workers' Bill of Rights" is a document that was produced by Gig Workers United, an organization of full-time and part-time delivery app workers that advocates for "transparent pay, livable wages, improved health and safety conditions, and labour protections." Their "Bill of Rights" ensures that gig workers have access to the same basic rights at work as all other workers. In particular, it elaborates the minimum rights that the Government of Ontario, as well as other levels of government, must guarantee to gig workers to ensure fairness and non-discriminatory treatment at work. The "Bill of Rights" demands:

1. A worker is a worker; Full employment rights with no carve-outs from minimum wage, sick leave, vacation pay and other minimum employment standards.
2. Payment for all hours of work: Paid time from when workers sign in until they sign out of the app with a clear and concise breakdown of how pay is calculated.
3. Compensation for necessary work related expenses to ensure gig workers' real wages are not reduced below the minimum wage.
4. Full and equal access to regulated benefits programs like Employment Insurance (EI), Canada Pension Plan (CPP) and injury compensation (WSIB).
5. Data transparency: access to all data collected and how the algorithm affects workers, including any forms of discipline.

6. Make all work count: gig work must count towards Permanent Residency applications.
7. Put onus on employers to prove that workers are not employees instead of workers proving that they are not independent contractors. Enshrine a clear test for employment status.
8. Recognize gig workers’ right to form a union, with the union they choose, to have a collective voice at work.
9. Workers must have the right to negotiate for livable wages and benefits with their employer. Real, worker-led sectoral bargaining to enable meaningful collective bargaining to raise industry standards.
10. An end to arbitrary deactivations and fair compensation for glitches: Just cause protection against deactivation, access to a clear and free process and enforcement mechanisms for minimum standards. Compensation for technical issues on the platform’s end.

The OFL recommends the inclusion in Bill 27 and/or the full implementation of the “Gig Workers’ Bill of Rights.”

Review of Schedule 6: *Workplace Safety and Insurance Act, 1997*

One of the most regressive aspects of Bill 27 is part of Schedule 6, where new provisions would permit or require amounts above prescribed levels in the insurance fund of Ontario's occupational health and safety system to be disbursed to employers. The inclusion of these provisions alone is reason enough to oppose Bill 27, as it further undermines the viability and accessibility of the Workplace Safety and Insurance Board (WSIB), while doing nothing to address longstanding problems that affect the program: years of benefit cuts, aggressive claims management, and the systemic under-recognition of injuries.

Nearly one quarter of Ontario's workforce--24% or approximately 1.7 million workers--have no WSIB coverage at all. This includes workers employed by "Class N" employers (non-hospital health care and social assistance), such as Disability Support Workers and Personal Support Workers who have been on the frontlines of the pandemic. While the Government of Ontario has hailed workers like these as heroes, it has done little or nothing to improve their conditions of work or address the injuries they most commonly experience.

As a result of this gap in coverage, along with excessively low benefit rates and low approval rates of claims, an injury at work for Ontario workers is likely to be a poverty sentence. Indeed, about half of injured workers in Ontario live in poverty, according to the Ontario Network of Injured Workers Groups, and about one in five lives in extreme poverty.

The proposed changes go in the opposite direction of what Ontario workers, especially injured workers, need from their occupational health and safety system: the immediate expansion of WSIB coverage to all of Ontario's workforce, the increase of benefit rates to well above the poverty line, and the increase of approval rates of injured workers' claims. In addition, the term "surplus" inaccurately describes the origins of amounts above prescribed levels in the insurance fund: they are not "excess" funds beyond what is required, but rather the result of a regime that repeatedly denies injured workers' claims and that eliminated the WSIB's liability on the backs of workers. Bill 27 contributes to this confusion by proposing to disburse the "surplus" to employers.

The OFL recommends the removal from Bill 27 of Schedule 6.

Beyond Bill 27, but with respect to the *Workplace Safety and Insurance Act, 1997*, as amended by the *Stronger Workplaces for a Stronger Economy Act, 2014*, the Government of Ontario has failed to respond to repeated requests to implement Section 83(4) of the *Act*, which make employers and the temporary help agencies they use, as described above, jointly and severally liable for the health and safety of temporary workers. An Order in Council is all that is required to bring this change into immediate effect.

In 2019, Enrico Miranda, a temporary agency worker at Fiera Foods in North York, Ontario, was crushed to death when a machine he was cleaning suddenly activated. Mr. Miranda was the fifth of five temporary workers to be killed on the job at Fiera Foods since 1999. His and one other death occurred on the watch of the current government. Employers such as Fiera Foods that rely primarily on temporary agency workers are aware that the agencies that hire them, and not the client company itself, are responsible for the workers' health and safety under the *Workplace Safety and Insurance Act*. This creates a disincentive for employers to maintain minimal health and safety standards in their workplaces, as long as they face no consequences for the health and safety of temporary workers.

Under Bill 27, employers who continue to violate health and safety standards for temporary workers, because the client company is not jointly and severally liable with the agencies that hire the workers, could still be deemed "safe" employers and eligible to receive "surplus" funds from the WSIB. Implementing Section 83(4), which the Government of Ontario could do immediately, regardless of the status of Bill 27, would transform the employment model for temporary workers and dramatically improve their health and safety conditions--in some cases, literally saving lives.

The OFL recommends the immediate implementation of Section 83(4) of the *Workplace Safety and Insurance Act*.

Conclusion

Ontario workers urgently need legislation that includes strong enforcement and compliance mechanisms, the implementation of best practices they have long been calling for, and concrete measures to lift injured workers out of poverty. The OFL would have welcomed any move towards these ends and the improved protections of workers' rights, but Bill 27 relies more on rhetorical gestures than concrete enforceable measures. Without the inclusion of all the amendments recommended above, and by other worker advocates, the OFL is unable to endorse or support Bill 27.

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