

A Safety Net For All: Reforming EI to Support Low-wage and Precarious Workers

**Submission to the 2021 Federal Consultations
on Reforming Canada's Employment Insurance Program**

**Ontario Community Legal Clinics EI Working Group
November 19, 2021**

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Introduction

The **Ontario Community Legal Clinics EI Working Group** is made up of caseworkers from the 79 community legal clinics across Ontario that are funded by Legal Aid Ontario. We help non-unionized, low-wage and precarious workers access Employment Insurance (“EI”), the Canada Emergency Response Benefit, and the Canada Recovery Benefits. We thank you for the opportunity to provide submissions on the EI reform consultations, and in particular how EI can best support the needs of vulnerable workers.

EI is a key piece of Canada’s social safety net. It is meant to offer a base of benefits to workers across Canada who may enter a period of unemployment, while they transition back into the workforce.

However, the COVID-19 pandemic has highlighted the EI program’s longstanding failure to support low-wage and precarious workers. Over the last two decades, unemployed workers have faced serious and increasing barriers to accessing EI benefits. Shifts in the labour market have led to increasing numbers of workers who are employed in temporary, part-time or precarious work. Although they pay into EI, onerous EI eligibility requirements prevent these workers from qualifying for benefits. And even if they do qualify, the benefits amounts are inadequate. Further, migrant workers are effectively excluded from the EI program because of the conditions imposed by their work permits, despite contributing to the program.

As a result, low-wage and precarious workers may fail to qualify for EI, and at the same time earn just enough not to qualify for provincial social assistance programs. Today’s EI rules fail to reflect the realities of precarious work, and have left many of these workers without any safety net.

The failures of EI led to temporary improvements to the program during the pandemic, and the creation of the Canada Emergency Response Benefit and the Canada Recovery Benefits. But these measures were only temporary. **It is time for permanent reforms to EI that will meaningfully support workers and re-establish its role as a crucial safety net for workers.**

Our submissions explore the barriers low-wage and precarious workers face in accessing EI, the inadequacy of the benefit rates, which workers are disproportionately impacted, and making EI more procedurally accessible. We make the following 13 recommendations for permanent reforms to improve EI.

Recommendations

Ensure Access to EI for Temporary, Part-Time and Precarious Workers

1. Establish a universal eligibility threshold of 360 hours or 12 weeks of work.
2. Eliminate the “quit/fire” disqualification rules.
3. Implement stronger protections for employees misclassified as independent contractors.

Ensure Adequate EI Benefit Rates to Support Workers

4. Raise the EI benefit rate to 70% of workers’ pre-unemployment earnings, based on their 12 best weeks of work.
5. Establish a minimum benefit floor of \$500.
6. Extend the EI benefit period to 50 weeks for all regions.
7. Implement the promised extension of EI sickness benefits to 35 weeks.
8. Eliminate the allocation of separation payments.

Improve Migrant Workers’ Access to EI

9. Amend the EI Act and Regulations to ensure access to all EI benefits for migrant workers.

Strengthen Supports for Vulnerable Workers in Accessing EI

10. Provide interpretation services at Service Canada for workers whose first language is not English or French, or who may require sign language interpretation.
11. Provide Service Canada with the resources to reduce errors in processing initial applications for EI, answer all calls in a timely manner, and pay out all successful applications within 30 days.
12. Provide training to Service Canada staff on cultural sensitivity and dealing with clients who face mental health challenges, and hire more diverse workers.
13. Reinstate the Tripartite Appeal Process/Employment Insurance Boards of Appeal.

I. Ensure Access to EI for Temporary, Part-Time and Precarious Workers

Workers who pay into EI should be able to access it. As a national contributory program, EI must provide reliable income security for Canadian workers facing unemployment regardless of the character of their employment. But the EI program is largely inaccessible to those employed in precarious work, including part-time, temporary and casual jobs. It thereby fails the very workers who need it most.

The percentage of the unemployed who are eligible for EI has steadily decreased since the 1990s due in large part to two factors: in 1996, EI eligibility shifted from a calculation based on weeks worked, to a calculation based on the number of hours worked; and the labour market has seen a dramatic increase in part-time, temporary and precarious work. Because these workers experience more frequent periods of unemployment or work less regular hours, they had difficulty meeting the required qualifying-hour threshold of 420 to 700 hours that was in place before the pandemic.

Perhaps unsurprisingly, then, only approximately 40% of the unemployed in Canada could access EI prior to the pandemic, and only 30% of those in urban centres.¹ When we consider the share of unemployed workers who contributed to EI, 67% of them qualified for EI in 2017, but only 45% of low-wage workers were eligible.²

The barriers to accessing EI have significantly impacted workers who are women, racialized, Indigenous, living with a disability, and/or immigrants. It is well documented that workers from these equity-seeking groups are overrepresented in low-wage, part-time and precarious work.³ This means that many vulnerable workers who paid into the EI program and expected to have support if they stopped working have often been left with nothing.

Low-wage workers' frequent ineligibility for EI is particularly unfair given that they contribute a higher proportion of their income to the EI program. Since the maximum insurable earnings for EI for 2021 is set at \$56,300, an individual making under \$50,000 per year is contributing 1.58% of their total income to EI, while an individual making \$100,000 per year is contributing only 0.89% of their income to the program. In other words, low-wage workers contribute a higher share of their earnings to EI, and yet are less likely to qualify for it.

Systemic change is required to remove systemic barriers to accessing EI. Many groups have long recommended lowering the insurable hours requirement to 360 hours in all

¹ Donna E. Wood, "Employment Insurance: Next Steps on the Road to Renewal" (January 2019), online (pdf): Atkinson Foundation <https://atkinsonfoundation.ca/site/uploads/2019/02/Atkinson_EI-Report_13019-FINAL.pdf>.

² Ricardo Tranjan, "Towards an Inclusive Economy: Syncing EI to the Reality of Low-wage Work" (27 June 2019) at 4, online (pdf): Canadian Centre for Policy Alternatives <<https://www.policyalternatives.ca/publications/reports/towards-inclusive-economy>>.

³ See ACORN Canada & MASSE, "The Employment Insurance Act: A Sexist Law in Need of Reform" (2018) at 3, online (pdf): <https://www.lemasse.org/wp-content/uploads/2018/10/Feuillet_anglais_F_web.pdf>.

regions in Canada. We support this call. Such a change would significantly improve the ability of those employed in part-time, temporary and precarious work to qualify for the income support they need when they are unable to work.

We therefore make the following recommendations:

- 1. Establish a universal eligibility threshold of 360 hours or 12 weeks of work.** This rule should apply to both EI regular and special benefits.
- 2. Eliminate the “quit/fire” disqualification rules.** These punitive rules disproportionately hurt women, who often leave work due to caregiving responsibilities or harassment, and vulnerable workers dealing with unsafe working conditions.
- 3. Implement stronger protections for employees misclassified as independent contractors,** including expanding EI’s definition of employee to include dependent contractors as well as workers engaged in app-based work.

II. Ensure Adequate EI Benefit Rates to Support Workers

The EI program should replace workers' income at a rate that enables them to live with dignity. But EI has failed to adequately support low-wage and precarious workers. This has the effect of perpetuating poverty and disadvantage for women and the precariously employed.

In 1971, individuals could receive EI benefits equal to 66.7% of their insurable salary. Today workers can only receive benefits equal to 55% of their insurable salary, up to a maximum of \$595 per week in 2021. With low-wage and precarious jobs becoming increasingly common in Canada, a growing percentage of workers receive EI benefits at a rate that only deepens their poverty. The implication for unemployed workers seeking EI benefits is clear: low benefit rates will leave many in the labour market's most in-demand sectors struggling to bridge themselves through a period of unemployment.

Low EI benefit rates disadvantage women in particular, who still earn much less income than men in Canada. The gender wage gap is wider for women who are racialized, Indigenous, living with a disability, and/or immigrants.⁴ As a result, women overwhelmingly receive lower amounts of EI benefits than do men. **EI's 55% income replacement rate actively reproduces and contributes to the gender pay gap and poverty of women.**

Finally, while we note that the EI Family Supplement does provide some added benefits to many low-income families whose net income is under \$25,921 per year, this program is simply not enough to remedy the disparities resulting from the manner in which EI benefit payouts are calculated. It does not address those who make above the \$25,921 cut off, and it does nothing for single individuals living from paycheck to paycheck or women suffering from the gender pay gap.

We therefore make the following recommendations:

- 4. Raise the EI benefit rate to 70% of workers' pre-unemployment earnings,** based on their 12 best weeks of work.
- 5. Establish a minimum benefit floor of \$500.** Workers who earn low wages or the minimum wage already struggle to make ends meet; receiving a benefit amount equivalent to 55% or even 70% of those wages is simply unlivable. A minimum benefit floor would help avoid the deepening of poverty for low-wage workers. During the pandemic, EI provided a benefit floor of \$500 that was a much-needed support for low-wage workers.

⁴ Sheila Block, Grace-Edward Galabuzi & Ricardo Tranjan, "Canada's Colour Coded Income Inequality" (December 2019) at 5, online (pdf): Canadian Centre for Policy Alternatives <<https://www.policyalternatives.ca/sites/default/files/uploads/publications/National%20Office/2019/12/Canada%27s%20Colour%20oded%20Income%20Inequality.pdf>>. See also Statistics Canada, 2016 Census of Population, Statistics Canada Catalogue nos. [98-400-X2016268](#), [98-400-X2016360](#), and [98-400-X2016200](#); and Statistics Canada, 2012 Canadian Survey on Disability, [Table 14-10-0283-01 \(formerly CANSIM 115-0023\)](#).

6. **Extend the EI benefit period to 50 weeks for all regions.** Benefit periods that are contingent on the number of hours a person works disadvantage women the most. Women on average work fewer hours than men for reasons that include taking on a greater share of family care responsibilities; and predominantly female occupations tend to provide fewer hours of work.
7. **Implement the promised extension of EI sickness benefits to 35 weeks,** to ensure sick workers can afford to stay home and keep our co-workers, families and communities safe.
8. **Eliminate the allocation of separation payments.** This will simplify the processing of EI claims and significantly support low-wage workers as they transition back to work.

III. Improve Migrant Workers' Access to EI

The EI system severely discriminates against most foreign workers in Canada. While temporary foreign workers in Canada pay into the EI system through premiums, they are routinely unable to access the benefits of that program. Migrant workers provide essential labour in many industries including food, construction, personal care and retail, but are vulnerable to exploitation due to their precarious immigration status. Denial of access to EI and the income support they need only heightens those vulnerabilities.

As long as a migrant worker (either under the Temporary Foreign Worker Program, the Caregiver Program or the Seasonal Agricultural Workers Program) has worked sufficient hours to qualify for EI, then they can technically apply to receive EI benefits should they lose their employment. However, to receive EI benefits, an individual must show that they are “ready and available for work”. Generally, an individual has to show that they are currently in Canada and working under a valid work permit. Accordingly, temporary foreign workers who are issued a temporary work permit for a restricted period or a closed work permit that restricts them to certain employers are often unable to access these benefits when they lose their jobs.

Additionally, in 2012 Canada changed its regulations to expressly limit EI parental benefits to those individuals who are authorized to remain in Canada at that time. Migrant workers, such as seasonal agricultural workers, who have left Canada but are likely to return at the beginning of the next growing season, can no longer access parental benefits. However, all other Canadian workers are eligible to receive parental benefits even if they leave the country, because workers on parental leave are expected to be caring for their child, and not looking for work in Canada.

Only migrant workers are treated differently. This change was regressive and disappointing, as parental benefits were the only EI benefit that many migrant workers were able to access. As a result, most migrant workers are no longer eligible for any EI benefits, even though they pay into the program with each pay cheque.

Migrant workers contribute to the EI program and provide crucial labour to the economy. Reforms to the EI program must eliminate its systemic discrimination against migrant workers and include access to all EI benefits for migrant workers.

We therefore make the following recommendation:

- 9. Amend the EI Act and Regulations to ensure access to all EI benefits for migrant workers.** This includes amending the EI Act to ensure that all work in Canada is “insurable” for purposes of accessing EI.

IV. Strengthen Supports for Vulnerable Workers in Accessing EI

When a worker stops working because they have lost their job, become ill or become a parent, it is essential that applying for income replacement through the EI program be fast and easy. If that application is denied, there must also be a fast, easy and fair process for appealing that decision. This goal is not being met. There are barriers at both the application stage and the appeal stage that are undermining access to the program.

We therefore make the following recommendations:

- 10. Provide interpretation services at Service Canada** for workers whose first language is not English or French, or who may require sign language interpretation. The EI application process can be complex and confusing, and language barriers often prevent claimants from properly communicating the information or documents needed to accurately process their claims. Interpretation services are crucial to ensuring equitable access to the program, and should be made available over the phone, online and in person, subject to health and safety protocols for in person services.
- 11. Provide Service Canada with the resources to reduce errors in processing initial applications for EI, answer all calls in a timely manner, and pay out all successful applications within 30 days.** Incorrect decisions on initial EI claims hurt workers by prolonging their wait to access much-needed benefits. But they occur all too frequently: around 50% of initial decisions are reversed on reconsideration⁵, which suggests significant errors are being made at the initial application stage. There needs to be improved quality of initial decision-making so that unemployed workers can access benefits more quickly, and are not thrust into the appeal process unnecessarily. Improved staff training and increased staffing can assist with getting the decisions right the first time. Service Canada should also provide resources to ensure calls are answered in a more timely manner, and pay out successful applications within 30 days.
- 12. Provide training to Service Canada staff on cultural sensitivity and dealing with clients who face mental health challenges, and hire more diverse workers.** The loss of work and income can be devastating to low-income individuals, and can create or exacerbate mental health issues for them. However, these individuals often have difficulty accessing Service Canada and are sometimes treated as “too difficult” to serve. Service Canada requires staff who are more representative of the communities they serve, and who have a better understanding of the barriers that equity-seeking groups face in the

⁵ In the 2019-2020 fiscal year, 52% of reconsidered decisions were reversed. See Government of Canada EI Monitoring and Assessment Report 2019/2020, at p. 353 <<https://www.canada.ca/content/dam/canada/employment-social-development/programs/ei/ei-list/reports/2019-20-EI-MAR-EN.pdf>>.

workplace and in accessing EI. This will enable them to serve vulnerable communities effectively and create a more inclusive EI program.

13. Reinstate the Tripartite Appeal Process/Employment Insurance Boards of Appeal, and include case navigators to assist workers with the appeals process. The tripartite Board of Referees that preceded the Social Security Tribunal included labour and employer representatives, and allowed workers to tell their story in a community-based, receptive setting that was key to the Board's success. The Employment Insurance Boards of Appeal was scheduled to commence operating in April 2021. We urge the federal government to maintain the Board and make it a permanent feature of the EI appeals process.

The EI program has long failed to reduce inequality and instead increased hardship and poverty for the precariously employed. This cannot continue. The pandemic has provided a crucial opportunity to rethink how we support workers when they cannot work. We urge the federal government to adopt our recommendations and reform EI into an equitable safety net for all workers.

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