

**CUPE Ontario
Brief / Submission to the
Standing Committee on the
Legislative Assembly Hearing—Bill 139**

**An Act to amend the
Employment Standards Act, 2000**

**In relation to temporary help agencies and
certain other matters—**

Wednesday, March 25, 2009



Home care workers exclusion from severance and termination pay under Bill 139 — An Act to Amend the Employment Standards Act, 2000

Background:

The Canadian Union of Public Employees (CUPE) represents more than 220,000 members in Ontario and 575,000 country-wide. CUPE members deliver public services on the front lines in communities across the country. Our members work for hospitals, municipalities, libraries, health care, emergency services, community-based and other social services, schools, electrical utilities, universities and airlines.

The Ontario CUPE membership includes approximately 500 home care workers. Through collective bargaining, CUPE has endeavored to improve the wages and working conditions of the home care workers we represent above the basic Employment Standards Act, 2000 (ESA) provisions. However, the majority of Ontario's 40,000 home care workers do not belong to a union and are not covered by a collective agreement.

Home care workers are among the nearly 40 per cent of Ontario workers employed in contingent, contract and temporary jobs. These workers have little income stability, receive few benefits, and their workplace is often unsafe. Progressive economists argue that many government policies, such as contract competition in home care delivery that rely on a low-waged contingent workforce, are fueling poverty and income inequality in this province.

Ontario law categorizes home care workers as 'elect-to-work'. Until recent changes (January 2009) to employment standards, home care workers have been exempt from the public holidays provisions of the ESA, and continue to be exempt from the requirement to provide notice of termination (or termination pay in lieu of notice) and severance pay.

Home care competitive bidding model and the exploitation of a racialized, female home workforce:

Ontario's home care workers are predominantly female workers. Many are from racialized communities. Their wages are low compared to other community-based health and social service workers. These women are paid as little as \$12.50 per hour and they have no full-time employment, no pensions, no benefits, often no mileage and no paid travel time to clients.

Home care workers lose their jobs each time the home care agency they work for loses a contract under the current home care competitive bidding process. Despite the fact that the home care system they are employed in has a built-in job loss probability under contract competition, Ontario law denies them severance and termination pay. The exploitive working conditions are so bad in the sector that the annual turnover rate of caregivers is 57 per cent. Often they work for several home care providers in order to cobble together enough work hours in a week to guarantee a baseline living wage.

The nature of the home care system in Ontario, based on a competitive bidding contract model and delivered by predominantly for-profit providers, has proved disastrous for the level and quality of care for recipients and the wages and working conditions of home care workers.

Since 2003, the Dalton McGuinty government has had ample time to improve both the quality of services and the wages and working conditions for home care workers by scrapping the detrimental competitive bidding system. The Liberal government has, so far, failed to do that.

Exclusion of home care workers from Bill 139 entitlements:

CUPE Ontario supports the intent of Bill 139 – An Act to Amend the Employment Standards Act, 2000 as a redress for the gaps in our current labour laws and employment standards that have enabled diminished workplace protections for temporary and contract workers.

While CUPE Ontario concurs with many community-based worker advocacy groups that Bill 139 is a positive start to ensure that more than 700,000 Ontario workers who fall under the ‘elect-to-work’ category are given increased rights and protections, we are calling for amendments to the Bill—specifically to rectify the exclusion of home care workers under the legislation.

There are many loopholes in Bill 139 since the government has narrowly defined who and what work arrangements are regulated under the Bill. However, clause 74.2 explicitly excludes a worker, such as a home care worker, who is an “assignment employee” assigned to provide services under contract with the Community Care Access Centre (CCAC) or doing work governed by a contract with CCAC.

Under the proposed changes to the Employment Standards Act, 2000, in Bill 139—that would repeal the elect-to-work exemptions for agency workers—home care workers are being denied termination and severance pay when they lose employment. These are the entitlements that will be given to other contract workers once the legislation is passed.

It begs the question: Is this purposeful withholding of termination and severance pay to CCAC contracted home care workers directly related to the liability of the government funder—the Ministry of Health and Long-Term Care—to pay these costs under a home care delivery model that already exploits workers through low pay and fuels job loss?

The competitive bidding system means that home care workers lose employment much more frequently because agencies and companies are always losing contracts and then Bill 139 would exclude them from receiving termination and severance pay.

This purposeful denial of termination and severance for home care workers who because of the nature of the home care delivery system, are subject to precarious employment and income instability through no fault of their own, flies in the face of the provincial government's commitment to reduce poverty in Ontario.

Bill 139 amendments called for:

It is unfortunate that the provincial government has, for the last six years, refused to engage Ontarians publicly on developing a fully public home care delivery model—like in Manitoba. It is equally unfortunate that there were no province-wide hearings on Bill 139 and there is only one day for deputations before this committee.

Bill 139 provided the government yet another opportunity to begin to improve wages and working conditions for home care workers. However, Bill 139, as currently proposed, again fails home care workers and doubly punishes them. There is a fundamental unfairness here. The exploitation of home care workers must stop. They must be included in new protections in Bill 139.

Even a Liberal government-commissioned report on home care competition, written by former health minister Elinor Caplan, recommended that home care workers receive termination and severance.

Home care workers should not be exempt from the new entitlements of termination and severance pay that, when Bill 139 is law, all elect-to-work workers—except home workers—will be entitled to receive.

CUPE Ontario asks for the following amendment to Bill 139:

Delete Section 74.2 (exemption of home care workers under CCAC contract) in its entirety.

CUPE Ontario is asking that section 74.2 of Bill 139 be deleted and that the repeal of the elect-to-work exemption from termination and severance pay come in effect immediately for all workers.

The amendment would ensure home care workers are eligible for termination and severance pay. This is the same entitlement extended to other elect-to-work status workers once Bill 139 is passed into law.

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