



Federal Budget 2012

An analysis of the Budget Implementation Bill (C-38) affecting labour market policy

EMPLOYMENT INSURANCE

The Unemployed and Job Search Requirements

The HRSDC Minister will be given the power to set regulations to define what constitutes "suitable employment for different categories of claimants" and to define "reasonable and customary efforts" to find work. Claimants can be cut off if they decline "suitable employment" and do not make "reasonable and customary efforts" to find work.

This effort, called the "Quick Return to Work" is aimed at linking EI claimants, particularly those deemed frequent claimants, with local, regional and national job opportunities. It is also linked to the Temporary Foreign Worker Program to fill jobs in areas deemed to be suffering from labour shortages.

The government has not clarified as of yet what will determine "suitable employment" nor has it defined what will be "reasonable and customary efforts" to find work. So it is unclear at this moment whether EI claimants who refuse to move to another community for a job that could be lower paid, or who wish to focus on gaining work in their previous field rather than accept temporary work will lose EI benefits.

A major concern is that workers may be forced to move to take temporary jobs, or low-wage jobs rather than be allowed to continue to seek employment in their occupational field.

High Unemployment Regions

The Budget Implementation Bill will harm unemployed workers in regions of high unemployment such as Atlantic Canada, Quebec and the North.

A pilot project that gave claimants in areas of high unemployment five extra weeks of benefits will expire. Another pilot project that based benefits on the

best fourteen weeks of earnings will be replaced by a new program that will likely harm claimants living in some areas of the country with high unemployment.

Changes to the clawback rules for working while receiving EI benefits may end up actually penalizing those with very low benefits. Some of the rule changes regarding working while receiving benefits and basing benefits on best weeks' earnings will, however, benefit other workers. The CLC is making HRSDC aware of the unfair effect of the changes to some groups of unemployed workers.

Appeals Process

EI claimants denied benefits currently appeal those decisions to an EI Board of Referees, a tripartite panel system with a chairperson appointed by the government, a worker representative appointed by the Commissioner for Workers and an employer representative appointed by the Commissioner for Employers.

This system of part-time tripartite Boards of Referees that hears appeals in over 80 different regions in Canada, will end in April, 2013.

A new Social Security Tribunal will be set up to hear not only EI appeals, but also CPP, CPP disability and OAS appeals. This new Social Security Tribunal replaces the CPP and OAS Review Tribunal, the Pension Appeals Board, and the EI Board of Referees and Umpires.

The new Social Security Tribunal will be divided into three (3) sections: an Appeal Division, an Income Security Section, and an EI Section. Appointments to the EI Section will be made by the HRSDC Minister in consultation with the EI Commissioners. However, the Minister is under no obligation to accept the Commissioners' recommendations. This means the EI Commissioner for Workers, who works with the CLC to produce the appointments, will no longer have the power to appoint worker representatives for EI appeals. The intent is to replace the balanced tripartite panels with a single "expert".

The Tribunal will be made up of 74 full-time members, plus part-time members up to the equivalent of 11 full-time positions. 39 of those members will have expertise in EI and hear only EI appeals. This is a substantial reduction from over 300 EI panels (composed of over 1,000 people including almost 350 from the labour movement) under the existing tripartite system. The 300 panels currently decide on almost 26,000 appeals annually, in 83 regions across the country. It is likely claimants under the new system will experience considerable delay in having their appeals heard and backlogs of decisions will be common. It is unclear from the Budget Implementation Bill where the

39 members specializing in EI will be located to cover off the regions the existing panels service.

This new system will be in place for EI appeals filed on April 1, 2013 or later. The existing system will cover cases filed before April 1, 2013. The members of the existing system will remain in place until their decisions are issued. Decisions under the current system must be issued by November 1, 2013, at which point the existing Board of Referees will be disbanded permanently.

Appeals will be considered by the Appeal division of the Tribunal and not the EI Section. Unlike the existing system, leave will have to be given to appeal the decision of a Tribunal member.

The current Boards of Referees work in the 83 EI regions providing local in-person hearings. They usually render their decisions in 28 days. The new system being put in place for April 2013 will likely be far more remote, and may require appellants to travel or have their appeals heard by telephone.

IMMIGRATION AND TEMPORARY FOREIGN WORKER PROGRAM

The budget made some broad announcements to change the immigration system to align Canada's immigrant intake much more closely to real time employer demand for specific skills. There were few details but more recent announcements have been more specific.

The Budget announced the elimination of the backlog of about almost 300,000 pre-2008 applications for the economic immigrant program. Those who had applied will be refunded their application fees but they will now have to reapply under new terms and conditions. The backlog list had already been "mined" to identify applicants who met immediate labour market skills needs.

The government's aim is to be able to quickly process economic immigration applications for a specific and limited number of occupational categories, with the aim of determining if an applicant will be allowed to immigrate within a period of about one year. There will be no obligation on the government to process all applications.

This is rough justice for those already in the queue. The government argues that quicker processing in the future can be achieved by wiping out the existing backlog. They should instead address the criticisms raised by the Auditor General in 2009 and fix the system creating the backlogs.

Moving forward, economic immigrants will have to provide third-party validated evidence of language ability and of Canadian equivalent skills. Preference will also be given to younger applicants and those with Canadian work experience.

The government argues that this will result in a better fit between the skills of immigrants and the job market, resulting in better outcomes for immigrants and greater economic benefits from the immigration program.

Concerns have been raised that a revamped economic immigration program will allow employers to effectively run the program by fast tracking applications for prospective immigrants who have job offers in hand. However, the government says that all immigrants will still have to pass an initial screening. This will be an area to watch carefully moving forward.

The government will create a new stream for skilled trades workers within the economic immigrant program, to be implemented early next year. Those applying will have to provide third party evidence of skills that meeting Canadian standards, and of language ability. This measure is needed since the current points system fails to adequately recognize the value of skilled trades qualifications. Attention will need to be paid to who will be the assessing bodies.

While not part of the Budget, the government is currently holding consultations with the aim of limiting the numbers of immigrants in or nearing retirement age who come to Canada sponsored by their children. The government's consultations on family class immigration are available online but offer only limited policy options for respondents to consider, such as:

- extending the term of sponsorship of a parent or grandparent from ten years to life.
- payment of a sponsorship fee of \$40,000.
- narrowing family definitions to reduce the number of eligible family membership.

The government risks undermining the attractiveness of Canada as a destination country if it continues to limit the numbers who come under family reunification programs.

TEMPORARY FOREIGN WORKER PROGRAM

The Temporary Foreign Worker Program (TFWP) is being reviewed. On April 25, as part of a package of changes to the TFWP, the government announced plans to immediately issue Labour Market Opinions (LMOs) from HRSDC faster. LMOs will now be issued within 10 days, instead of the current three months, so employers will know faster if their application for migrant workers under the TFWP has been approved or rejected. A positive LMO is required before an employer can hire temporary workers.

This is a cause for concern since the existing criteria for establishing a shortage are very vague and subject to employer manipulation and demands. In fact, an earlier pilot program called the Expedited Labour Market Opinion (ELMO) in Alberta and BC in 2009 and 2010 showed that 85% of employers were receiving positive LMOs in just three to five days.

In 2010, the Alberta Ministry of Employment and Immigration released an inspection study of over 400 workplaces using migrant workers that revealed over 74% of those employers had violated the provincial Employment Standards Act regarding pay rates and record keeping.

We can anticipate continued violations of provincial and territorial employment standards under these changes to the already deeply flawed Temporary Foreign Worker Program.

Despite the evidence of violations of provincial and territorial employment standards by employers using migrant labour that has already been accumulated, the federal government has not implemented any substantial compliance, monitoring or enforcement mechanisms on employers using the TFWP.

The announced changes of an accelerated process for issuing LMOs includes an online application process for employers. Employers can simply reply Yes or No to the question of whether they are participating in an employment standards monitoring initiative. A "no" response to the question will not slow down the employer's application.

At the same time, the government plans to direct unemployed workers to job vacancies now being filled by temporary foreign workers. There are indications they will cut EI benefits for workers who refuse job offers. Watch and see what distance they will expect people to have to travel etc.

WAGES FOR SKILLED MIGRANT WORKERS

The government also announced that employers seeking highly-skilled migrant workers could pay the workers up to 15% less than the average rate of pay for the occupations.

As uncovered by the CLC in 2010, the primary source used by HRSDC to determine prevailing wage rates for Labour Market Opinions is administrative data from EI claimants. Ironically, the government uses data from unemployed workers in specific regions for specific jobs to determine the wage rate for migrant workers that employers claim they need due to labour shortages. And now, under the government's announcement, employers can pay up to 15% less than these average local rates of pay.

Following the CLC's complaints, the government created a Labour Advisory Group to help develop a new methodology to determine prevailing wage rates rather than relying on statistical data compiled from EI claimants. Unfortunately, when the participating CLC-affiliated unions on the Labour Advisory Group opposed government proposals that would give unfair power to employers to set lower wage and benefit rates, the government changed the mandate of the Labour Advisory Group to reduce its standing in the process.

It is likely that the policy announcement allowing employers to set the wages of highly-skilled migrant workers at 15% less than average rates of pay will eventually be applied across the board to all streams of the TFWP. In short order, average wage rates will begin to drop and all workers and their communities will suffer.

REMOVING THE FLOOR FOR FEDERAL CONSTRUCTION CONTRACTS

The Budget Implementation Bill is a boon to construction contractors doing business with the federal government. The Bill repeals the *Fair Wages and Hours of Labour Act* which had set a basic floor for wages to be paid to gain federal construction contracts. It also eliminates the Federal Contractors Program under the *Employment Equity Act*, freeing construction contractors undertaking federal contracts from compliance with federal employment equity laws. The Federal Contractors Program had applied to employers with 100 or more workers and receiving more than \$200,000 in federal contracts