

WORKING PAPER 8: HOW TO ENSURE HEALTH AND SAFETY AT WORK*†

1. Key challenge & overview

People in precarious employment have more difficulty exercising their rights under labour law, including their health and safety rights.

Occupational health and safety standards govern the health and safety of workers on the job. The enforcement of these standards relies on the Internal Responsibility System (IRS), which allows workers and employers to voice their concerns over hazards and risks. However, many of those in precarious employment have more difficulty exercising these rights. **Thus, policy options focus on increasing awareness of these rights, expanding coverage to more workers, ensuring adequacy of the system, and improving enforcement.**

2. Evidence from PEPSO

Workers in precarious employment are more vulnerable to workplace health and safety risks than those in secure employment. This is because the responsibility of identifying and voicing concerns for hazards in the workplace falls on employers and workers through Joint Health and Safety Committees.¹ In fact, the government of Ontario believes that one of the main purposes of the *Occupational Health and Safety Act (OHS Act)* is to facilitate the Internal Responsibility System (IRS) in the workplace.² Thus, if workers believe they cannot speak up about health and safety dangers, the entire system of enforcing health and safety regulation is threatened.

Precarious workers are less likely to voice concerns about health and safety because of fears their future employment may be threatened. In PEPSO's *It's More than Poverty* report,[‡] **24% of workers in precarious employment reported that raising a health and safety concern, or other issue related to employment rights, would threaten their future employment, while no workers in secure employment expressed such a concern.**[§]

3. Context/current situation

Occupational health and safety (OHS) standards are the health and safety standards to which all workers are legally entitled. Issues that fall under the umbrella of occupational health and safety include workplace violence and harassment and toxic substances.

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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.

§ Note: raising employment rights is one component of the *Employment Precarity Index*. This means that this variable was used to define precarity.

In Ontario, the *Ontario Occupational Health and Safety Act*, run by the Ministry of Labour, governs occupational health and safety. It covers all Ontario workers, workplaces, supervisors, and employers with some exceptions. Exceptions include unpaid interns and home workers, while self-employed workers are only covered by some parts of the Act. Temporary agency workers and subcontracted workers are covered by this legislation, but establishing and enforcing liability throughout the supply chain can be complicated.³ Workers under federal jurisdiction are covered by Part II of the Canada Labour Code, which covers 6% of non-public administration jobs in Canada – 300,000 of which are in Ontario.⁴

The **Ministry of Labour** is charged with coordinating legislation, building awareness and enforcing standards, but other stakeholders play key roles in health and safety. The **Chief Prevention Officer**, along with the Ministry of Labour certifies members of the Joint Health and Safety Committee.⁵ **Workplace Safety and Insurance Boards (WSIB)**, established in 1997, deal with workers' compensation, and develop standards for employer accreditation.⁶ Six **Health and Safety Associations** are charged with training, consulting and clinics.⁷ However, there is limited government intervention in identifying hazards and building awareness of these hazards in the workplace.⁸

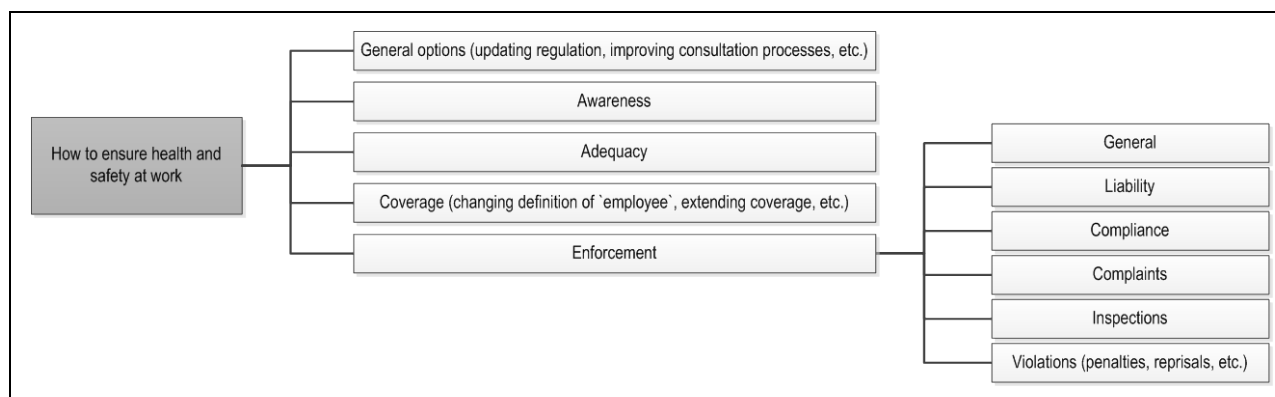
The **four rights** that are covered by the Ontario *Occupational Health and Safety Act* are to:⁹

- **Participate in the identification and response to health and safety concerns.**
- **Be aware of and be trained on hazards.**
- **Refuse unsafe work.**
- **Have the certified joint health and safety committee members stop work in dangerous cases.**

In 2010, an Advisory Panel on Occupational Health and Safety, chaired by Tony Dean, carried out a comprehensive review of the Ontario *OHS*A. This review is often referred to as "the Dean report." The consultation process involved input from unions, employers, and health and safety leaders. The Dean report uncovered many gaps and opportunities and paid special attention to the need for protection for vulnerable workers. In 2011, the province of Ontario passed Bill 160, the *Occupational Health and Safety Statute Law Amendment Act*, which addressed a number of these recommendations. Bill 160 took effect in April of 2012.¹⁰ Some advocates believe that this bill missed an opportunity to enhance health and safety standards for those in precarious employment.

4. Policy options

In **general, policy options** in this field recommend that workers be covered by effective health and safety protocols¹¹ and that workers have the right tools to be able to negotiate and modify employment and working conditions.¹² Most options are universal options, with some targeting those in precarious employment.



General recommendations include:

- **Updating regulations** and paying special attention to **small businesses**.¹³
- Adjusting funding considerations by transferring research-funding responsibility to the Chief Prevention Officer.¹⁴
- Including health and safety criteria in any considerations for **innovation funding**.¹⁵
- Guaranteeing that workers have the **right to know about health risks** generated by employment and working conditions.¹⁶

There are also **general** policy options designed specifically for **workers in precarious employment**. These include:

- Improving the **consultation** process to ensure the inclusion of workers, or their representatives, in any stakeholder discussions between government and industry.¹⁷
- Conducting more **research** on relevant issues, such as the connection between OHS and non-traditional work,¹⁸ the relevance of dangerous work being conducted by home workers or temp workers,¹⁹ and whether non-traditional workers are being included within OHS participatory mechanisms.²⁰

4.1 Awareness

There are two areas of policy recommendations that respond to the need for more awareness of health and safety standards. The first set of policies aims to improve understanding of existing regulations. These include:

- **Improving the process of awareness building** by working with the Ministry of Labour, WSIB, and Health and Safety Associations to review the current inventory of health and safety information and products;²¹ giving the newly established prevention office responsibility for knowledge management;²² and developing a multi-year, social awareness strategy to reduce public tolerance for violations, which could be developed by ministries and training organizations.²³
- **Expanding awareness to more groups** by incorporating health and safety content into courses in post-secondary and trade school;²⁴ having health professionals become advocates for better awareness,²⁵ specifically in sectors that rely heavily on temporary jobs;²⁶ and mandating that clients give OHS information to self-employed workers.²⁷ They also recommend providing information to new business owners,²⁸ which could be achieved by actively linking business registration with health and safety information.²⁹
- **Improving the products that are delivered to workers** by providing products in different languages³⁰ and publicizing them through different forms of media.³¹

Another set of policy options addresses awareness through health and safety training more specifically. These include:

- **Targeting particular groups**, such as newcomers,³² those with low levels of English,³³ those who are new to the field,³⁴ or temp workers.³⁵
- **Enacting mandatory training** for health and safety representatives,³⁶ construction workers,³⁷ and supervisors responsible for frontline workers.³⁸
- **Developing particular types of mandatory training**, such as fall protection training for those working at heights.³⁹
- **Using stakeholder consultations** to determine which other hazardous training should be mandatory,⁴⁰ and which sectors should have mandatory training.⁴¹
- **Improving training strategy** by consolidating materials, increasing consistency of content, and improving availability of current inventory.⁴² Also suggested is creating, implementing, and auditing training standards;⁴³ and developing a database on training for purposes of planning and evaluation.⁴⁴

4.2 Adequacy

Some policy recommendations focus on improving existing regulations to better serve workers. One set looks at different ways to improve the **process of monitoring and managing OHS** in Ontario. These recommendations include:

- **Reviewing current regulations** in the OHS management systems to ensure they are keeping pace with the changing labour market.⁴⁵
- **Creating regional health and safety representatives** who are linked through one institution, which is currently used by trade unions in Sweden.⁴⁶
- **Conducting hazard risk assessments** that include a focus on workers on temporary contracts.⁴⁷

4.3 Coverage

There is one area of recommendations that looks to improve regulations by focusing on **expanding coverage** of the Occupational Health and Safety Act to groups with limited coverage, either by **changing the definition of “employee,”** or by **extending coverage to specific forms of employment.** These options include:

- **Aligning the provincial OHSA legislation’s definition of employee with the Canada Labour Code.**⁴⁸
- **Presuming an employer-employee relationship.**⁴⁹
- Studying the possibility of **extending coverage to self-employed people.**⁵⁰
- **Extending all rights and obligations to self-employed workers,** regardless of whether they work with employees and whether or not they are incorporated.⁵¹
- **Allowing certain provisions to be extended to the self-employed,** such as that of preventative withdrawal available to pregnant employees,⁵² or the right to refuse certain types of work without termination of contract.⁵³
- **Expanding joint health and safety committee requirements coverage to temp agencies.**⁵⁴

4.4 Enforcement

Part of the challenge of establishing an effective health and safety system is ensuring that health and safety regulations are **enforced.** Policy options that generally address these issues include:

- **Ensuring effective enforcement,** especially for those in non-standard, non-union, precarious work environments.⁵⁵
- **Advocating for better enforcement** of OHS,⁵⁶ especially in sectors that rely heavily on temp jobs.⁵⁷
- **Reviewing current enforcement policies and supports for inspectors.**⁵⁸

Enforcement policy options also look at what measures can be taken to enable more **pro-active enforcement.** For example, by enforcing OHSA through pro-active inspections to ensure that joint committees or individuals are in place.⁵⁹ Other options include:

- Employing **strategic enforcement,**⁶⁰ which could entail ‘**risk-based**’ regulation that allocates enforcement resources on the basis of how much risk is in a given sector.⁶¹
- Using a proposed **Vulnerable Workers Committee** to identify sectors where there are concentrations of vulnerable workers.⁶²
- **Targeting specific groups or businesses,** such as workplaces and sectors operating in the underground economy;⁶³ workplaces that regularly use large numbers of temporary agency workers;⁶⁴ industries employing vulnerable workers at high risk of injury, such as agriculture, hospitality, cleaning and workplaces with temp agency staffing;⁶⁵ as well as workplaces and sectors with concentrations of vulnerable workers.⁶⁶

- **Developing criteria for workplaces where employment fissuring⁶⁷ has occurred** so that they can be better targeted.⁶⁸

4.4.1 Liability

One challenge related to enforcement is knowing **who is liable for OHS offences when work is subcontracted**. Policies that aim to clarify liability include:

- Improving liability for OHS by **using government contracts as a model**. Such contracts would require contractors to commit to specified OHS management practices, which include monitoring OHS performance by sub-contractors.⁶⁹
- Developing a **fair wage-like policy for OHS**, where government contractors would have to commit to implementing specified OHS management practices and assume liability for subcontracted firms. This happens in the U.K. through Construction Regulations.⁷⁰
- **Increasing the liability of those at the top end** of the supply chain to make them responsible for performance at the lower levels.⁷¹
- Ensuring employment agency and client-business **joint and several liability**** for any legislation concerning OHS, industrial accidents and occupational diseases, and in cases of subcontracting.⁷²
- **Enforcing from the bottom-up** and ensuring that violations trigger a broader review of the employer's entire OHS management system.⁷³
- **Exploring health and safety supply chain mechanisms** to address subcontracting to small businesses and temp agencies.⁷⁴ This could include reviewing liability policy for temp agencies to see whether injuries and accidents are being attributed to the agencies instead of client businesses.⁷⁵
- **Monitoring sub-contractor performance** of OHS, which could be done through private-sector employers.⁷⁶
- **Specifying liability in the contract** between employee and temp agency.⁷⁷
- **Specifying liability and specific responsibilities** for part-time, or casual workers, or workers on call during the first fourteen days following the beginning of the disability.⁷⁸
- **Strengthening health and safety incentives and responsibility** to client employers.⁷⁹

4.4.2 Compliance

Another set of enforcement options looks at increasing compliance with **OHS standards**. These include:

- Developing **voluntary codes of conduct** that are strategic and supplemental.⁸⁰
- **Reviewing regulations** to ensure that they are current, consistent and provide compliance flexibility and support.⁸¹
- **Intensifying support for small businesses** by developing focused and integrated programs, with dedicated resources, to help them improve compliance.⁸²
- **Integrating compliance assistance** with enforcement.⁸³

Compliance concerns also include **incentives** that have been developed to **support employers**. These include:

- Creating an **accreditation program** that recognizes employers who successfully implement OHS systems of management.⁸⁴

** 'Joint and several liability' is a legal term that implies mutual responsibility. In this case, it refers to the client-business and employment agency both being liable.

- **Reviewing and revising existing financial incentive programs**,⁸⁵ which could include determining the effects of the experience rating program and other policies on vulnerable workers, particularly on temporary foreign workers and temp agency workers.⁸⁶
- **Developing financial incentives for employers** who hire suppliers based on their health and safety records.⁸⁷
- **Developing government procurement policies**⁸⁸ and **Workplace Safety and Insurance Board financial incentives**⁸⁹ that consider the health and safety performance of suppliers.

4.4.3 Complaints

An additional area of policy options aims to develop innovative ways to enable **anonymous complaints**. These include:

- Using **mobile phones to collect data on anonymous complaints** from workers in their own languages and to inform workers of their rights. This system is practiced by a social enterprise in California called LaborVoices.⁹⁰
- Designing and launching a **mobile worker survey** to analyze data collected from the front lines, which is practiced by Good World Solutions in California.⁹¹

4.4.4 Inspections

Another section covers **workplace inspections** and how this process can be improved. These options include:

- Carrying out a **safety blitz** based on appropriate risk assessments. The results of such a campaign would trigger a broad review of the employer's management system. Safety blitzes are used in Sweden, Australia, and the U.K.⁹²
- **Linking inspection budgets** not only to the size of the labour force, but also to the **level of workplace fragmentation**.⁹³
- **Targeting home workers' work sites**, with special provisions that balance privacy with the right to a safe workplace.⁹⁴
- Mandating **follow-up inspections** in cases of prosecutions under the OHSA, or the criminal code, to ensure that changes have been made.⁹⁵

4.4.5 Violations

One set of recommendations explores ways to improve the process of addressing **violations**. These options include:

- Introducing a **middle-ground of enforcement for violations** where prosecution is not required. This could include a statement of regret, description of offense, or assurance about future behavior.⁹⁶ This system, known as "enforceable undertaking" is in place in the Australian state of Queensland.⁹⁷
- **Investigating any death in the agricultural industry**, and following up with a coroner's inquest. This is already practiced in construction and mining in Ontario.⁹⁸

There are a range of **penalties** that can be imposed when violations are uncovered. Suggestions addressing this area include:

- Adding **administrative monetary penalties** as an enforcement tool and adding policies and procedures to govern their use.⁹⁹
- Improving the **process for ticketing**, which could include a review of offences for which tickets can be used for enforcement.¹⁰⁰ It could also include developing a strategy that ensures more tickets are issued to

employers, rather than workers and supervisors;¹⁰¹ thus ensuring ticketing occurs at the highest possible level and is not pushed down to the lowest.¹⁰²

- Ensuring accessible and timely **income coverage** for injured workers, and paying attention to information barriers and linguistic barriers.¹⁰³ This can include making decisions on **compensation rates** for injured temporary agency workers that are informed by research.¹⁰⁴
- Including **loss of income from multiple workplaces** for the first 14 days of disability, instead of just the workplace where the injury occurred,¹⁰⁵ or from highest-paying job,¹⁰⁶ or calculating based on annualized income.¹⁰⁷
- Implementing **“hot cargo” provisions** that enable OSHA inspectors to impose embargos on goods manufactured in violation of OSHA, which exists on the federal level for goods manufactured in the U.S. garment industry.¹⁰⁸ The threat of “hot cargo” provisions could also be used to hold more upstream contractors accountable.¹⁰⁹

Prosecutions fall within the realm of **penalties**. Options to address prosecutions include:

- Inquiring into the **limited use of criminal prosecutions** for violations of OHS regulation.¹¹⁰
- **Enabling prosecutions to happen as a result of pro-active inspections.**¹¹¹
- Reviewing **prosecution policy** and developing guidance for inspectors on when to lay charges, which should be done by the Ministry of Labour.¹¹²

A final area related to violations is **reprisals once a complaint is made, or violation uncovered**. These options include:

- Ensuring **reprisals** or any other form of retaliatory behavior are **penalized** appropriately, and considering prosecutions as a penalty for retaliation.¹¹³
- Ensuring **access to information and support** from an independent, third-party organization, in cases of reprisal complaints, such as the Office of the Worker Adviser or Office of the Employer Adviser.¹¹⁴

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 PEPSO, 2013

² Ontario Ministry of Labour, 2013b

³ Law Commission of Ontario, 2012

⁴ Human Resources and Skills Development Canada, 2011

⁵ Workplace Safety and Insurance Board, 2014

⁶ Ontario Ministry of Labour, 2013c

⁷ Ontario Ministry of Labour, 2013c

⁸ PEPSO, 2013

⁹ Law Commission of Ontario, 2012

¹⁰ Law Commission of Ontario, 2012

¹¹ Access Alliance, 2011

¹² Benach, Muntaner, & Santana, 2007

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- 13 Dean (Ontario Ministry of Labour), 2010
 - 14 Dean (Ontario Ministry of Labour), 2010
 - 15 Dean (Ontario Ministry of Labour), 2010
 - 16 Benach, Muntaner, & Santana, 2007
 - 17 Law Commission of Ontario, 2012
 - 18 Bernier, Vallee, & Jobin (Quebec Ministere du Travail), 2003
 - 19 Bernier, Vallee, & Jobin (Quebec Ministere du Travail), 2003
 - 20 Bernier, Vallee, & Jobin (Quebec Ministere du Travail), 2003
 - 21 Dean (Ontario Ministry of Labour), 2010
 - 22 Dean (Ontario Ministry of Labour), 2010
 - 23 Dean (Ontario Ministry of Labour), 2010
 - 24 Dean (Ontario Ministry of Labour), 2010
 - 25 Healthy Debate, 2013
 - 26 Healthy Debate, 2013
 - 27 Bernier, Vallee, & Jobin (Quebec Ministere du Travail), 2003
 - 28 Dean (Ontario Ministry of Labour), 2010
 - 29 Dean (Ontario Ministry of Labour), 2010
 - 30 Dean (Ontario Ministry of Labour), 2010
 - 31 Dean (Ontario Ministry of Labour), 2010
 - 32 Wellesley – Woodgreen, 2013
 - 33 Access Alliance, 2011
 - 34 Access Alliance, 2011
 - 35 Workers' Action Centre & Parkdale Community Legal Services, 2008
 - 36 Dean (Ontario Ministry of Labour), 2010
 - 37 Dean (Ontario Ministry of Labour), 2010
 - 38 Dean (Ontario Ministry of Labour), 2010
 - 39 Dean (Ontario Ministry of Labour), 2010
 - 40 Dean (Ontario Ministry of Labour), 2010
 - 41 Dean (Ontario Ministry of Labour), 2010
 - 42 Dean (Ontario Ministry of Labour), 2010
 - 43 Dean (Ontario Ministry of Labour), 2010
 - 44 Dean (Ontario Ministry of Labour), 2010
 - 45 Vosko, Tucker, Thomas, & Gellatly, 2011
 - 46 Vosko, Tucker, Thomas, & Gellatly, 2011
 - 47 Artazcoz, Benach, Borrell, & Cortes, 2004
 - 48 Bernier, Vallee, & Jobin (Quebec Ministere du Travail), 2003
 - 49 Bernier, Valee, & Jobin (Quebec Ministere du Travail), 2003
 - 50 Bernier, Valee, & Jobin (Quebec Ministere du Travail), 2003
 - 51 Bernier, Valee, & Jobin (Quebec Ministere du Travail), 2003
 - 52 Bernier, Valee, & Jobin (Quebec Ministere du Travail), 2003
 - 53 Bernier, Valee, & Jobin (Quebec Ministere du Travail), 2003
 - 54 Institute for Work and Health, 2013
 - 55 Access Alliance, 2013
 - 56 Healthy Debate, 2013
 - 57 Healthy Debate, 2013
 - 58 Dean (Ontario Ministry of Labour), 2010
 - 59 Law Commission of Ontario, 2012
 - 60 Vosko, Tucker, Thomas, & Gellatly, 2011
 - 61 Vosko, Tucker, Thomas, & Gellatly, 2011
 - 62 Law Commission of Ontario, 2012
 - 63 Dean (Ontario Ministry of Labour), 2010
 - 64 Institute for Work and Health, 2013
 - 65 Law Commission of Ontario, 2012
 - 66 Dean (Ontario Ministry of Labour), 2010
 - 67 Fissuring occurs when a workplace splits into smaller units.

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- ⁶⁸ Vosko, Tucker, Thomas, & Gellatly, 2011
⁶⁹ Vosko, Tucker, Thomas, & Gellatly, 2011
⁷⁰ Vosko, Tucker, Thomas, & Gellatly, 2011
⁷¹ Vosko, Tucker, Thomas, & Gellatly, 2011; Lewchuk, Clarke, & De Wolff, 2011 citing Weil & Mallo, 2007
⁷² Bernier, Valee, & Jobin (Quebec Ministere du Travail), 2003; Vosko, Tucker, Thomas, & Gellatly, 2011
⁷³ Vosko, Tucker, Thomas, & Gellatly, 2011
⁷⁴ Law Commission of Ontario, 2012
⁷⁵ Law Commission of Ontario, 2012
⁷⁶ Vosko, Tucker, Thomas, & Gellatly, 2011
⁷⁷ Bernier, Valee, & Jobin (Quebec Ministere du Travail), 2003
⁷⁸ Bernier, Valee, & Jobin (Quebec Ministere du Travail), 2003
⁷⁹ Institute for Work and Health, 2013
⁸⁰ Vosko, Tucker, Thomas, & Gellatly, 2011
⁸¹ Dean (Ontario Ministry of Labour), 2010
⁸² Dean (Ontario Ministry of Labour), 2010
⁸³ Dean (Ontario Ministry of Labour), 2010
⁸⁴ Dean (Ontario Ministry of Labour), 2010
⁸⁵ Dean (Ontario Ministry of Labour), 2010
⁸⁶ Law Commission of Ontario, 2012
⁸⁷ Dean (Ontario Ministry of Labour), 2010
⁸⁸ Law Commission of Ontario, 2012; Dean Report
⁸⁹ Law Commission of Ontario, 2012
⁹⁰ Yes! Magazine, 2013a
⁹¹ Yes! Magazine, 2013a
⁹² Vosko, Tucker, Thomas, & Gellatly, 2011
⁹³ Vosko, Tucker, Thomas, & Gellatly, 2011
⁹⁴ Bernier, Valee, & Jobin (Quebec Ministere du Travail), 2003
⁹⁵ Vosko, Tucker, Thomas, & Gellatly, 2011
⁹⁶ Vosko, Tucker, Thomas, & Gellatly, 2011
⁹⁷ Vosko, Tucker, Thomas, & Gellatly, 2011
⁹⁸ Toronto Star, 2013a
⁹⁹ Dean (Ontario Ministry of Labour), 2010
¹⁰⁰ Dean (Ontario Ministry of Labour), 2010
¹⁰¹ Vosko, Tucker, Thomas, & Gellatly, 2011
¹⁰² Vosko, Tucker, Thomas, & Gellatly, 2011
¹⁰³ Access Alliance, 2011
¹⁰⁴ Bernier, Valee, & Jobin (Quebec Ministere du Travail), 2003
¹⁰⁵ Bernier, Valee, & Jobin (Quebec Ministere du Travail), 2003
¹⁰⁶ Bernier, Valee, & Jobin (Quebec Ministere du Travail), 2003
¹⁰⁷ Bernier, Valee, & Jobin (Quebec Ministere du Travail), 2003
¹⁰⁸ Vosko, Tucker, Thomas, & Gellatly, 2011
¹⁰⁹ Vosko, Tucker, Thomas, & Gellatly, 2011
¹¹⁰ Vosko, Tucker, Thomas, & Gellatly, 2011
¹¹¹ Vosko, Tucker, Thomas, & Gellatly, 2011
¹¹² Dean (Ontario Ministry of Labour), 2010
¹¹³ Vosko, Tucker, Thomas, & Gellatly, 2011
¹¹⁴ Dean (Ontario Ministry of Labour), 2010