



Ontario Federation of Agriculture

Ontario AgriCentre

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MEMORANDUM

TO: OFA Policy Advisory Council

FROM: Peter Sykanda, Policy Analyst

DATE: August 8, 2017

RE: Review of the Agricultural Employee Exemptions under the Employment Standards Act (ESA)

Government has adopted a recommendation from the Changing Workplaces Review to conduct a thorough review of those worker categories that currently have an exemption from provisions under the Employment Standards Act (ESA), 2000.

The ESA sets out the minimum rights and responsibilities of most employees and employers in Ontario workplaces. It covers a number of employment standards, including the payment of wages, hours of work and rest periods, minimum wage, overtime, vacation, and termination of employment. Government is conducting this review out of concern that exemptions from minimum standards presents a situation where *“many employees, particularly vulnerable workers in precarious jobs, may be denied the protections under the ESA that are essential for them to be treated with minimum fairness and decency.”*

There are four categories of agricultural workers under the ESA, each with various exemptions and special rules from provisions under the Act; they are:

- a person employed on a farm (farm workers)
- harvesters, a special category of farm workers
- “near farmers”, and
- landscape gardeners

The Special Advisors hired to conduct the Changing Workplaces Review recommended a sector specific approach to reviewing the exemptions and special rules, *“designed to provide a consultation process with representatives of employers, employees and government when exemptions are reviewed or requested or where sector specific regulation is being considered. The process is designed to allow all stakeholders an opportunity to advance and protect their legitimate interests, to provide advice and solutions and to seek consensus on outcomes that address the legitimate concerns and interests of all participants.”*



As the sector specific exemptions to the ESA have not been reviewed, they are suggesting the review, *“should be a transparent process in which the opinions, interests and suggestions of stakeholders are taken into account and that is designed to generate outcomes more precisely tailored to the needs and legitimate interests of employers and employees potentially affected.”*

The review committee will be made up of a neutral chair, representatives of both large and small employers, employee representatives, government, and experts with specialized knowledge (as requested by the committee).

The policy framework within which the committees operate should include the following:

- a) *“the Employment Standards Act, 2000 should apply to as many employees as possible;*
- b) *departures from, or modifications to, the norm should be limited and justifiable; and,*
- c) *proponents of maintaining an exemption should bear the onus of persuasion that the exemption is still required”*

The review of exemptions and special rules for the agricultural sector is expected to take place in the late fall, 2017. There remains a number of questions regarding the review process and what the burden of proof looks like for justifying maintaining an exemption under the ESA.

Our argument during the Changing Workplaces Review has been that the justification for the current exemptions and special rules remains as true today as when they were adopted.

Some of the agriculture commodities have experienced an increasing degree of mechanization in the last decade. A rush of new technologies has allowed a farm owner/operator to significantly decrease or remove the demand for outside labour while maintaining production levels. While the trend towards mechanization of the agricultural sector will continue, the distinctive characteristics of agricultural production have remained largely unchanged and there is still a need in many sectors for the gentle touch and discerning mind of a person. This is, and has always been, a fundamental condition of agricultural production. We do not believe that an overly bureaucratic or exhaustive process to review agricultural exemptions and special rules will change the outcome given the nature of the work has not changed.

The OFA and the Labour Issues Coordinating Committee (LICC) will continue to strengthen our case to provide the review committee with a compelling reason to maintain the exemptions for the agricultural sector.