

M-194 : Precarious Employment in Canada

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Definitional issues

There are many definitions of precarious employment, often varying depending on the context in which the question is raised. Core definitions target “non-standard” forms of employment that look to the nature of the contractual relationships (employer-employee vs client-self-employed; triangular employment relationships), the temporal parameters of the contract (temporary or part-time vs indeterminate and full time) and the spatial characteristics of the employment (ie home-based work vs work done in employers’ premises). The International Labour Organization published a report defining concepts and looking at the effects of various forms of precarious employment on occupational health and safety (Quinlan, 2015). Job (Vézina et al., 2011) and employment (Lewchuk et al., 2013) insecurity which often overlap with non-standard employment arrangements also have negative consequences for workers’ health and low paid work that, for example, requires workers to hold two jobs to make ends meet has also been included in the concept of precarious employment (Lewchuk et al., 2013). In Québec (Vézina et al., 2011) and Ontario (Lewchuk et al., 2013) various studies have defined different parameters of precarious employment and measured associated working conditions and health issues.

Here I will focus on precarious employment as it relates to “non-standard” employment arrangements looking in particular at occupational health and safety challenges as well as regulatory effectiveness of occupational health and safety and workers’ compensation regimes in Canada. I will target issues relevant to the federal government as regulator or as an employer.

Links between precarious employment and occupational health and safety

The ILO published a report reviewing the literature on hazardous characteristics of non-standard work that identified three dimensions of precarious employment that are associated with negative occupational health outcomes: economic insecurity and reward pressures, disorganization, and regulatory failures accompanied by gaps in social security (Quinlan, 2015). The EQCOTESST study in Québec (Vézina et al., 2011) measured the prevalence of various categories of precarious employment and negative health outcomes. For example, precariously employed workers were more likely to be exposed to sexual harassment and more likely to have experienced a work accident in the previous twelve months. This was also true of workers who

reported employment insecurity. Precariously employed workers, notably those working on temporary contracts, were less likely to have access to the benefits associated with employment such as health benefits, paid sick days, salary insurance and pensions.

Temporary work has been associated in many studies with higher occupational accident rates (Foley, 2017). Employment via a temporary employment agency has been associated with higher occupational injuries and more serious health consequences in both American (Smith, Silverstein, Bonauto, Adams, & Fan, 2010) and Canadian studies (Ducharme-Varin, Vergara, & Raynault, 2017).

Links between precarious employment and regulatory effectiveness of occupational health and safety legislation

Protection of workers' health and safety is governed in the federal jurisdiction by the *Canada Labour Code* and is predicated, to a certain extent, on the internal responsibility system that relies on worker participation measures such as occupational health and safety committees to ensure workers have a voice in health and safety issues and feel protected if they need to speak up because of hazards in their workplaces. Non-unionized workers are less well protected and the precariously employed are far less likely to have the benefit of a union. Job insecurity reduces the likelihood of workers speaking out when exposed to hazards and those working for temporary employment agencies are less likely to feel sufficiently secure to voice their concerns. Quinlan's model reminds us that economic insecurity drives acceptance of poor working conditions, and that form of insecurity is prevalent with the precariously employed and with the solo self-employed (Vézina et al., 2011) pp. 123-124 who may be less likely to take the risk of raising safety concerns for fear of losing their contracts.

A study of temporary employment agency work in Ontario documented cases in which client employers preferred to bring in a temp agency worker to do more hazardous work which they didn't want to impose on their regular staff (Lippel et al., 2011) and economic incentives in the workers' compensation system can serve to encourage clients to outsource hazardous work as their workers' compensation records used for experience rating will not be adversely affected if there's an accident (MacEachen et al., 2012).

Triangular employment relationships such as those involving temporary employment agencies, a client employer and the worker are more likely to lead to disorganisation, where it is unclear as to which "employer" bears responsibilities for protecting workers from hazards (Ducharme-Varin et al., 2017). The self-employed are often unprotected by occupational health and safety provisions, depending on the jurisdiction, and many protective provisions only apply to "employees" as is the case in the Canada Labour Code and the Québec Occupational Health and Safety Act (Lippel & Laflamme, 2011).

Links between precarious employment and regulatory effectiveness of workers' compensation legislation

Workers' compensation systems provide for economic support for workers who incur injuries or develop diseases out of and in the course of their employment. The salary base will determine the level of economic support and the level of rehabilitation supports that will be offered to the worker and the precariously employed, be they part-time, on call or temporary are more likely to receive very low levels of compensation in most Canadian provinces, although Québec does guarantee a minimum level of benefits based on a presumed full-time earning capacity. The precariously employed are systemically undercompensated in most cases (Lippel, 2019). The right to return to pre-injury employment is often reserved for employees with indeterminate contracts so the precariously employed who become disabled because of their work are doubly penalized, receiving lower benefits and having fewer rights to return to work.

The federal government as regulator could ensure that the self-employed also benefit from protections in the Canada Labour Code part II and it could look more closely at the use of sub-contracting and more precarious contracts in certain sectors for which it is responsible including interprovincial trucking and shipping. It could also provide for workers' compensation benefits for all its employees rather than relying on provincial compensation schemes, as employees working in Québec who are precariously employed will receive better protections than those in Ontario, for example.

The federal government as employer could set an example if it were to minimize its reliance on temporary employment agencies and cease to outsource jobs to the self-employed. It could also seek to ensure that its employees are hired on indeterminate contracts, and could ensure that no employee who wishes to work full time is forced to work part-time.

References

Ducharme-Varin, Jean-François , Vergara, Daniel, & Raynault, Marie-France. (2017). *Invisible Workers: Health Risks for Temporary Agency Workers*. Retrieved from Montreal: https://publications.santemontreal.qc.ca/uploads/tx_asssmpublications/Invisible_Workers_Rap_DRSP_2016_01.pdf

Foley, Michael. (2017). Factors underlying observed injury rate differences between temporary workers and permanent peers. *American Journal of Industrial Medecine*, 60(10), 841-851.

Lewchuk, Wayne, Dyson, Diane, Glokdring, Luin, Meisner, Alan, Procyk, Stephanie, Rosen, Dan, . . . Vrankulj, Sam. (2013). *It's More than Poverty: Employment Precarity and Household Well-being*. Retrieved from

Lippel, Katherine. (2019). Strengths and Weaknesses of Regulatory Systems Designed to Prevent Work Disability After Injury or Illness: An Overview of Mechanisms in a Selection of Canadian Compensation Systems. In Ellen MacEachen (Ed.), *The Science and Politics of Work Disability Prevention* (pp. 50-71). New York and London: Routledge (Taylor & Francis).

Lippel, Katherine , & Laflamme, Anne-Marie. (2011). Les droits et responsabilités des employeurs et des travailleurs dans un contexte de sous-traitance: enjeux pour la prévention, l'indemnisation et le retour au travail. In Service de la formation continue du Barreau du Québec (Ed.), *Développements récents en droit de la santé et sécurité au travail, 2011* (Vol. 334, pp. 267-360). Cowansville: Éditions Yvon Blais.

Lippel, Katherine, MacEachen, Ellen, Saunders, Ron, Werhun, Natalia, Kosny, Agnieska, Mansfield, Elizabeth, . . . Pugliese, Diana. (2011). Legal protections governing occupational health and safety and workers' compensation of temporary employment agency workers in Canada: reflections on regulatory effectiveness. *Policy and Practice in Health and Safety, 9*(2), 69-90.

MacEachen, Ellen, Lippel, Katherine, Saunders, Ron, Kosny, Agnieszka, Mansfield, Liz, Carrasco, Christine, & Pugliese, Diana. (2012). Workers' compensation experience-rating rules and the danger to workers' safety in the temporary work agency sector. *Policy and Practice in Health and Safety, 10*(1), 77-95.

Quinlan, Michael. (2015). *The effects of non-standard forms of employment on worker health and safety*. Retrieved from Geneva:
http://www.ilo.org/travail/whatwedo/publications/WCMS_443266/lang--en/index.htm

Smith, Caroline K., Silverstein, Barbara A., Bonauto, Dave K., Adams, Darrin, & Fan, Z. Joyce. (2010). Temporary Workers in Washington State. *American Journal of Industrial Medicine, 53*(2), 135-145.

Vézina, Michel, Cloutier, Esther , Stock, Susan , Lippel, Katherine, Fortin, Éric , Delisle, Alain , . . . Prud'homme, Pascale (2011). *Enquête québécoise sur des conditions de travail, d'emploi et de santé et de sécurité du travail (EQCOTESST)*. Retrieved from Montréal: