Brief of the Fédération des travailleurs et travailleuses du Québec

Submitted for the Review of the Employment Insurance Program

Submitted to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA)

March 9, 2021

Fédération des travailleurs et travailleuses du Québec (FTQ)
565 Crémazie Blvd. East, Suite 12100
Montreal, Quebec H2M 2W3
Telephone and fax: 514-383-8000
Toll free: 1-877-897-0057
www.ftq.qc.ca [in French only]

Legal Deposit – 1st quarter 2021
ISBN – 978-2-89639-458-6
Bibliothèque et Archives nationales du Québec (BAnQ)

Table of Contents

Introduction 4
Improved EI coverage: A priority 5
Hybrid eligibility requirement 5
Extended benefit period 6
Higher benefit rate and revised calculation method 7
Elimination of disqualifications 7
Overhaul of EI funding, governance and administration 8
Other changes to consider 9
Conclusion 11
Summary of recommendations 12

Introduction

The Fédération des travailleurs et travailleuses du Québec (FTQ) [Quebec federation of labour] would like to thank the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities for the opportunity to present its comments on the Employment Insurance (EI) system.

The FTQ is Quebec's largest labour federation, representing over 40% of unionized workers, a total of more than half a million members. It is the strongest voice for Quebec workers and the leading forum for labour action and solidarity. FTQ members work in all industrial sectors across Quebec: offices, factories, retail, construction sites and a wide range of private- and public-sector institutions. One third of FTQ members are women.

This is obviously not the first time we have spoken out on this major issue to call for changes to EI. In July 2013, the FTQ, along with the other Quebec labour federations—the Confédération des syndicats nationaux (CSN), the Centrale des syndicats démocratiques (CSD) and the Centrale des syndicats du Québec (CSQ)—submitted an aptly titled brief, *L'assurance-emploi: un régime dénaturé à reconstruire* [Employment Insurance: a distorted system that needs rebuilding], to Quebec's EI review committee, the Commission nationale d'examen sur l'assurance-emploi. We also submitted a brief to this very committee in March 2016.

Originally, Unemployment Insurance (later Employment Insurance) was intended to protect workers who fall victim to unemployment. Over time, as employment volatility grew as the result of an erosion of stable employment, the federal government tightened up the eligibility criteria so much that today only a handful of unemployed workers, some of them having paid into the system for years, are able to obtain increasingly limited benefits. Legislative and administrative changes since the 1990s have forced workers to jump through hoops in order to claim the benefits they are entitled to, often making them feel as though they are suspected of cheating the system.

The crisis resulting from the COVID-19 pandemic has shown the limits of the current EI program. From the very first week of lockdown, it became clear that the administrative apparatus had quickly been overwhelmed by the flood of applications for benefits. The massive number of unemployed workers forced the federal government to introduce temporary simplified administrative measures to quickly provide emergency benefits to people who had lost their jobs because of COVID-19. Now, amid uncertainty about the reopening process and economic recovery, workers are not sure to get their jobs back, and they will once again turn to the EI program for financial security. Streamlining the EI program's administrative process and improving it overall has become more than important; it has become necessary.

We see EI reform as a chance to adapt EI to the modern world of work, in part to address the challenges of developing a sustainable economy. But it is mainly in the interest of fairness, collective solidarity and social justice that we wish to revamp the system, which all workers pay into.

This document is based on the inter-union platform developed by consensus by Quebec's labour federations: the FTQ, CSN, CSD and CSQ.

Improved EI coverage: A priority

The aim of any social policy is to "guarantee human dignity," to promote social inclusion and, in turn, to reduce social exclusion, while reducing poverty and promoting social cohesion. The EI system must be seen as a social good and not simply as an instrument of economic and fiscal policy. There should be no discrimination in access to benefits, which should be fully equal and structured to eliminate the factors that prevent women, for example, from qualifying on an equal footing because they are over-represented in non-standard employment.

There are a number of problems with EI, but one of the most obvious ones—one that absolutely must be corrected—concerns coverage. Over the years, eligibility criteria have been tightened, and the duration of benefits and the income replacement rate have been cut. As a result, fewer and fewer unemployed workers are eligible for benefits. Currently, less than 40% of claimants receive benefits, whereas in 1989, the program covered 83.8% of claimants![1] When workers do qualify for benefits, it is for a shorter period of time and for smaller amounts.

In the 1990s, the move to an hours-based eligibility system did much to exclude women, youth and immigrants, all of whom are over-represented in part-time jobs.

Prior to the temporary relaxation of legislative requirements on account of the pandemic, a woman working 20 hours a week could not qualify in Montreal until she had worked 35 weeks, while a man working 40 hours a week could qualify after 17.5 weeks of work, even if both had paid an equivalent amount into the system.

Under the current criteria for determining the duration of benefits, coverage is inadequate for people in temporary, seasonal or part-time jobs.

Hybrid eligibility requirement

In order to increase EI coverage and better protect part-time workers, the FTQ has long called for eligibility criteria based on a single requirement. While adopting a single requirement would be progress, we believe that a system based on insurable weeks is preferable to one based on hours. The benefit amount is proportional to weekly insurable earnings and EI premiums deducted, which is fairer. Generally, individuals who work long hours–who are often men–will find it to their advantage to qualify under the hours-worked standard, and likewise, individuals who work part-time—often women and young people—will find it to their advantage to qualify under the weeks-worked standard. We therefore recommend a hybrid eligibility requirement, one in hours worked and one in weeks worked, and the one most advantageous to the claimant would apply.

Access to special benefits should be granted to all qualifying individuals, especially those in non-standard employment (especially seasonal employment), for an adequate period. Dividing claimants into two categories unduly penalizes individuals in non-standard employment and runs counter to the intent of Parliament to cover the risks justifying the social safety net.

Proposals:

- **Adopt a single, universal hybrid eligibility requirement of 420 hours or 12 weeks of insurable employment, where the total hours for a week to be considered insurable must be equivalent to 14 hours worked per week.**
- **Eliminate the categories of claimants for consistency with the single hybrid eligibility requirement.**
- **Maintain eligibility for special benefits even in the event of a labour dispute.**

[1] Source: Canada Employment Insurance Commission.

Extended benefit period

Not only did counter-reforms in the 1990s restrict eligibility, they also significantly shorted the duration of benefits. In 1994, the benefit period was reduced by between 3 weeks and 18 weeks depending on the region's unemployment rate. The period currently runs from 14 weeks to 45 weeks.

Reducing the duration of benefits increases the number of unemployed workers left without support once they exhaust their benefits. As long-term unemployment increases, as has been the case during the pandemic, the problem becomes even more acute. Had the current government not put in place temporary measures, many people would have been left without a safety net.

To better protect unemployed workers, the benefit period should be increased by setting a high enough floor on the number of weeks payable in order to mitigate the effects of the "black hole." We recommend a floor of 35 weeks of benefits. We did not pick this minimum number out of a hat; it is roughly equivalent to the average maximum duration of regular EI benefits countrywide.[2]

Obviously, we believe that severance pay and layoff notices should not affect the benefit period, as these amounts are not salary, but rather compensation for job loss. Including these amounts in the record of employment makes matters significantly more difficult for employers, complicates administration and arbitrarily penalizes claimants. In keeping with the principle that an employee's entitlement to a benefit is based on their premiums, and not on any other income he or she may receive, such a change would not only be fair but would also streamline program administration.

Lastly, we propose to extend the benefit period to allow claimants to receive special benefits without affecting the regular benefits they have qualified for. It would also be appropriate to recognize other justifications, including those of victims of domestic violence or sexual assault.

Proposals:

- **Restore the benefit period to a maximum of 51 weeks, with a minimum floor of 35 weeks.**
- **Extend the benefit period to a maximum of 104 weeks so that claimants can receive special benefits.**
- **Extend sickness benefits to 51 weeks.**
- **Exclude severance pay and layoff notices when calculating benefit periods.**

[2] Canada, *2017–2018 Employment Insurance Monitoring and Assessment Report,* Chart 22, page 87. The average was 33.7 weeks in 2016–2017 and 32.6 weeks in 2017–2018.

Higher benefit rate and revised calculation method

The earnings replacement rate has also been significantly reduced over the years. While the rate was 67% of maximum insurable earnings in 1976, it dropped to 60% in 1979, 57% in 1993 and 55% in 1994.

The current crisis has led to the loss of good, high-paying jobs, meaning that benefits for many unemployed workers amounted to only 22%, 25% or 30% of their weekly earnings. This is the result of two aspects of EI that affect the benefit amount: the low earnings replacement rate and the low maximum insurable earnings cut-off, currently $53,600. This cut-off is lower than the figure used by the Canada Pension Plan and Quebec Pension Plan ($61,600), the Quebec Parental Insurance Plan ($83,500) and Quebec's workers' compensation board, the Commission de la santé et de la sécurité du travail du Québec ($83,500).

To better protect the economic security of workers against unemployment, the earnings replacement rate must be increased to 60% of maximum insurable earnings, which should also be increased. In addition, the average weekly insurable earnings must be based on the best 12 weeks, regardless of the unemployment rate. This would provide claimants with better income protection and also reduce the impact of weeks with little or no earnings during the rate calculation period.

Proposals:

- **Increase the earnings replacement rate to 60% of maximum insurable earnings, based on the best 12 weeks over the 52 weeks prior to the benefit period, regardless of the regional unemployment rate.**
- **Raise the maximum insurable earnings to the same level used by the Quebec Parental Insurance Plan ($83,500).**

Elimination of disqualifications

The total disqualifications imposed since 1993 have led to a high number of challenges to such decisions. This makes sense because disqualification is a strong incentive for people not to test the waters with an employer for fear of being disqualified if they later need to leave. It is therefore a barrier to solving the problem of labour shortages and imposes significant administrative costs.

Recent studies show that almost half of Canadian residents are able to meet their financial obligations for only one week.[3] With that in mind, a maximum penalty of six weeks would be a significant penalty. Studies also show that it is easier for EI claimants to relocate for a new job than people without financial support.

Elimination of total disqualification would also ensure that hours accumulated during the qualifying period with other employers, if any, would no longer be lost and could be used by claimants to qualify when they next apply for benefits. This is all the more important because the proportion of disqualified individuals who are totally disqualified is among the highest in the statistics.[4]

Proposal:

- **Limit disqualifications for voluntary quits or job loss owing to misconduct to six weeks, depending on the circumstances of separation. No disqualification period should be carried over to a subsequent benefit period.**

---

[3] See the findings of the 2018 survey of the Canadian Payroll Association, https://www.newswire.ca/news-releases/survey-finds-employed-canadians-failing-to-take-advantage-of-improved-financial-picture-to-reduce-debt-or-save-more-for-retirement-692483501.html.

[4] CANADA, *2017–2018 Employment Insurance Monitoring and Assessment Report*. According to Chart 12, 7.9% of unemployed people left their job without just cause as opposed to only 4.1.% to go back to school. Another 8.0% of unemployed individuals did not accumulate enough employment hours to qualify.

Overhaul of EI funding, governance and administration

The government has not contributed to the EI system as a third party since November 1990, except on an ad hoc basis, as it did in the aftermath of the 2008–2009 economic crisis. In addition, without the accounting transaction that wiped out the EI account, there would have been no year in which the government had to advance money, had a reserve been recognized. The rule that annual changes in the premium rate are limited to 5¢ should be analyzed, as it prevents any significant reform of EI.

The Supreme Court of Canada has concluded that there is no such thing as a reserve in a consolidated fund. The accounting entry is for information purposes only. In order to create a reserve, the account would have to be removed from the consolidated fund and restored to being an independent fund.

It is therefore imperative that the EI fund be separated from the government's general accounts and that the government stop using the EI fund for purposes other than its intended ones. We call on the government to establish an independent insurance fund in order to prevent the cash grabs from the fund of recent years from continuing. We believe that the independent EI fund should be administered by an arm's-length agency with powers greater than those currently held by the Financing Board, which is essentially an empty shell.

Proposals:

- **Maintain the current ratio of employee and employer contributions of 7/12:5/12.**
- **Reinstate a government contribution to EI funding. This financial contribution could be used for specific purposes, such as covering the costs of support measures for regions with high unemployment or providing partial or complete funding for active measures.**
- **Finance other EI program components with funds from an independent fund (trust fund), which would be financed by premiums from employers and workers.**
- **Include in the premium-setting mechanism the objective of building a reserve in the fund of between $10 billion and $15 billion.**
- **Create a tripartite organization (government, employers, workers) responsible for setting the premium rate, managing the trust assets of the independent fund and defining the scope of the EI program.**

Other changes to consider

To allow those who cannot return to work as a result of a labour dispute to qualify for EI benefits, we propose extending the qualifying period and benefit period in the event of a strike or lockout, based on the length of the dispute, unless the ineligible worker requalifies before the end of the dispute. Moreover, the labour dispute should be held to end with the signature of a new collective agreement instead of with the return to work of 85% of the workforce or the resumption of normal operations, as is now the case.

Currently, when a claimant is receiving benefits, he or she may under certain conditions earn employment income while retaining some of his or her benefits. The claimant then has a choice of two options for deducting earnings from benefits. Under the "default rule," the individual keeps 50¢ of EI benefits for every dollar earned in wages, up to a maximum of 90% of his or her previous weekly earnings (or approximately four and a half days of work). Any amount earned above this maximum is deducted dollar-for-dollar from benefits. The default rule applies automatically. The claimant can still choose the optional rule this year for EI claims submitted before August 12, 2018. This option allows the claimant to keep the equivalent of up to roughly one day's salary (defined as $75 or 40% of the claimant's EI benefit rate, whichever is greater) without any deduction from his or her EI benefits. Any amount earned above this maximum is deducted from benefits at a rate of 100%. However, this is a calculation that few claimants understand, and as a result, few of them take advantage of the optional rule when it is more advantageous to them.

As for the current EI appeal process, we know little about it, but what we do know is cause for concern. For example, the new Executive Director of the new Appeals Committee would report solely to the Chairperson of the Employment Insurance Commission rather than to its tripartite structure. First of all, this is a structure, all too rare at the federal level, that we do want, but above all we want it to continue to play a decisive role. And part of that role will be to oversee how the members of the new Appeals Committee structure will be deployed and trained, and how they will carry out their mandate on behalf of workers or employers. Another part will be to correct any problems that arise. This requires the Executive Director to be accountable to the tripartite structure of the Employment Insurance Commission.

The pandemic has highlighted what we have known for a long time: it takes far too long to process a claim. Claimants have to wait week after week to receive their first cheque, even though many have little or no savings that might afford them some peace of mind while they wait. And one of the best ways to speed up the processing of claims is to clarify some of the reasons for separation. Currently, an employer who must lay off an employee because he or she does not meet the requirements of the position is obliged to cite either a "dismissal" or some "misconduct," for which the individual will be disqualified, or "other" which means, at best, that processing will be further delayed.

Overpayments generate a lot of back and forth between the EI administration and claimants. In most cases, these overpayments are relatively small and not the result of deliberate errors on the part of claimants. The process could be streamlined by forgiving any error not caused by the unemployed worker's misrepresentation, provided that it is less than his or her maximum weekly benefit.

In addition, as things stand, individuals who have earned net income of more than $66,375 including EI benefits are required to repay a portion of that when they file their tax return. This is unfair; they paid into the program when they were working so that they, like everyone else, could be covered by EI if they lost their job. This repayment must therefore be abolished, especially since the government was wise enough not to impose such a measure for the CERB.

Lastly, prior to the 2013 reform, aid agencies, lawyers and union representatives of unemployed workers could contact a liaison officer specifically responsible for dealing with them. When a claimant reported a problem to his or her union, it was just a matter of obtaining a power of attorney, and the case could be referred to the liaison officer. These officers would follow up and could get things moving without the claimant having to go through the appeal system. The liaison officer was the shortest link between stakeholders and the bureaucracy. This system enabled a host of cases caused by administrative errors to be resolved informally. Abolishing liaison officers reflects a policy of closed-off communication that forces more claimants to use the appeal process.

Proposals:

- **Extend the qualifying period and benefit period in the event of a strike or lockout, based on the length of the dispute. A labour dispute should be held to end with the signature of a new collective agreement.**
- **Maintain both deduction methods, and have Service Canada automatically apply the more advantageous one at the end of the benefit period.**
- **Make the Executive Director of the new Appeals Committee accountable to the Employment Insurance Commission and not to its Chair alone.**
- **Add reasons for separation covering more situations.**
- **Eliminate the requirement to repay an overpayment of less than one week of benefits.**
- **Abolish the clawback of benefits if a person is deemed to have earned "too much."**
- **Reinstate liaison officers.**

Conclusion

Thank you for taking the time to hear our concerns. As you can see, this is an issue we are deeply concerned about. As soon as the current pandemic hit, the EI system revealed its many shortcomings, while the threat of a second wave forced the government to relax the eligibility criteria for the program. As a third wave arrives and economic recovery is uncertain in many sectors of the Canadian economy, the current system remains vulnerable. Not a week goes by that we do not receive requests for information about the current system or complaints from affiliated unions representing members having to deal with red tape and the limits of an EI system they have paid into, for benefits that keep shrinking following reform after reform.

We hope that you will pass on their message to Parliament so that EI can be restored to what it used to be: a program focused on the needs of individuals and communities, not a soulless bureaucratic regime that ignores the plight of workers who suddenly find themselves out of a job.

Summary of recommendations

- **Adopt a single, universal hybrid eligibility requirement of 420 hours or 12 weeks of insurable employment, where the total hours for a week to be considered insurable must be equivalent to 14 hours worked per week.**
- **Eliminate the categories of claimants for consistency with the single hybrid eligibility requirement.**
- **Maintain eligibility for special benefits even in the event of a labour dispute.**
- **Restore the benefit period to a maximum of 51 weeks, with a minimum floor of 35 weeks.**
- **Extend the benefit period to a maximum of 104 weeks so that claimants can receive special benefits.**
- **Extend sickness benefits to 51 weeks.**
- **Exclude severance pay and layoff notices when calculating benefit periods.**
- **Increase the earnings replacement rate to 60% of maximum insurable earnings, based on the best 12 weeks over the 52 weeks prior to the benefit period, regardless of the regional unemployment rate.**
- **Raise the maximum insurable earnings to the same the level used by the Quebec Parental Insurance Plan.**
- **Limit disqualifications for voluntary quits or job loss owing to misconduct to six weeks, depending on the circumstances of separation. No disqualification period should be carried over to a subsequent benefit period.**
- **Maintain the current ratio of employee and employer contributions of 7/12:5/12.**
- **Reinstate a government contribution to EI funding. This financial contribution could be used for specific purposes, such as covering the costs of support measures for regions with high unemployment or providing partial or complete funding for active measures.**
- **Finance other EI program components with funds from an independent fund (trust fund), which would be financed by premiums from employers and workers.**
- **Include in the premium-setting mechanism the objective of building a reserve in the fund of between $10 billion and $15 billion.**
- **Create a tripartite organization (government, employers, workers) responsible for setting the premium rate, managing the trust assets of the independent fund and defining the scope of the EI program.**
- **Extend the qualifying period and benefit period in the event of a strike or lockout, based on the length of the dispute. The labour dispute should be held to end with the signature of a new collective agreement.**
- **Maintain both deduction methods, and have Service Canada automatically apply the more advantageous one at the end of the benefit period.**
- **Make the Executive Director of the new Appeals Committee accountable to the Employment Insurance Commission and not to its Chair alone.**
- **Add reasons for separation covering more situations.**
- **Eliminate the requirement to repay an overpayment of less than one week of benefits.**
- **Abolish the clawback of benefits if the person is deemed to have earned “too much.”**
- **Reinstate liaison officers.**