

# **Recommendations for EI Reform**

**Submitted to the Review of the Employment Insurance Program**

**House of Commons' Standing Committee on Human Resources, Skills and  
Social Development and the Status of Persons with Disabilities (HUMA)**

**April 9, 2021**



## **Introduction**

The Employment Insurance (EI) program is a critically important income support program for working people and a vital automatic stabilizer for the Canadian economy.

However, the COVID-19 pandemic revealed the extent to which transformations in work and employment and reforms to the EI program have eroded EI's ability to cushion incomes from unemployment shocks and support aggregate demand in a severe economic downturn. Extraordinary and improvised income support measures were needed, on an emergency basis, to rectify the now-obvious gaps and deficiencies in the EI program.

EI's many inequities and inadequacies can no longer be ignored. Two decades after the turn of the millennium, the government's Speech from the Throne concluded from the pandemic that "Canada needs an EI system for the 21<sup>st</sup> century." We agree wholeheartedly.

In calling for EI reform, unions and workers' advocates have long championed the principles of:

- universal coverage;
- accessibility;
- benefit adequacy;
- sustainability;
- accountable governance; and
- non-discrimination toward women, low-wage workers in atypical and precarious employment, workers of colour, migrant workers and 2SLGBTQI workers.

It has been evident for some time that the EI program is falling short of these principles. The pandemic has revealed many of these shortcomings, while the emergency response of the federal government has shown the promise of concerted action to remedy many of the inadequacies in the EI program.

While immediate improvements can be made to improve access and benefit levels, as demonstrated in the response to the coronavirus pandemic, a comprehensive, open and participatory review of the EI program is overdue. A thorough review is important to properly address many of the interacting features of the program, as well as trade-offs that may be required between various objectives.

**The CLC recommends that the EI Commission be given a mandate to proceed with a comprehensive review of the EI program, with a timeline for submitting recommendations for administrative and other changes to the government.**

### **Specific Recommendations for EI Reform**

#### **1. Establish a single national entrance requirement equal to the lesser of 360 hours or 12 weeks of insurable employment**

Changes in work and employment, together with restrictions on access, have seriously limited the ability of the EI program to support incomes of the jobless in an unemployment crisis. The 1990s reforms, which replaced weeks of work with hours of work as the criterion for eligibility and dramatically raised the work-time requirements, discriminated against women, who disproportionately work part-time and short workweeks in sectors like retail, accommodation and food services, located in large urban centres with low unemployment rates. A hybrid entrance requirement equal to the lesser of 360 hours or 12 weeks of insurable employment would rectify much of this discrimination.

#### **2. Increase the benefit level to at least 60 percent of normal earnings, using workers' 12 best weeks and raise the ceiling on insurable earnings**

EI's current 55 percent benefit replacement rate does not provide a livable income for many. The replacement rate was at one time 66.6 percent for single claimants, and 75 percent for claimants with dependents. In the 1990s, the benefit rate was reduced; the ceiling on insurable earnings was also reduced and then effectively frozen for a decade. Today, the maximum EI benefit is roughly equivalent to what a full-time

minimum wage worker would earn in Ontario – but eligible low-wage workers receive much less than the maximum. Maximum EI benefits for highly skilled (and higher-income) unemployed workers have limited value and attractiveness. At the other end of the earnings spectrum, EI benefits are often too low for less skilled and lower-paid workers to subsist on.

### **3. Ensure up to 50 weeks of EI benefits, in all regions**

Rather than minimizing expenditures by forcing claimants into any available job at the earliest opportunity, the duration of EI benefits should be long enough to facilitate effective job search, support efficient labour reallocation and encourage high-quality job matches.

### **4. Extend the duration of EI sickness benefits to 50 weeks and ease access for workers with chronic and recurring illnesses**

EI sickness benefits' 15-week maximum is too low for many workers; over a third of EI sickness claims used the maximum number of 15 weeks of sickness benefits, and women and older claimants are more likely than men and younger claimants to use the maximum number of sickness weeks. The government should also review how episodic disabilities fit into the current EI sickness benefit framework and identify mechanisms to ease access.

### **5. Abolish the 50-week limit on combined special benefits and unemployment benefits**

EI rules limit the combination of special benefits (maternity, parental, sickness or caring for others) and unemployment benefits to a maximum of 50 weeks. Because women claim the majority of special benefits, due to their disproportionate burden of caring work, the 50-week limit on combined special and unemployment benefits negatively impacts women more than men.

**6. Limit the “quit-fire” disqualification to a maximum of three weeks and eliminate the disqualification for leaving a job to attend school**

Through the reforms of the 1990s, EI’s rules with respect to voluntary separation became much more restrictive than they had been previously. Workers deemed to have voluntarily left their jobs or deemed terminated for willful misconduct are completely excluded from regular EI benefits. Since the late 1980s, the share of unemployed receiving EI benefits has fallen from over 80 percent to under 40 percent today; over half of this drop was due to changes to EI rules restricting access, primarily disqualifying workers who quit or are fired.

**7. Create a liveable benefit floor for individual low-income claimants**

The combination of a 55 percent replacement rate and low earnings means that many low-paid workers who qualify for EI can expect a benefit that is too meagre to live on. This makes it an EI access issue; many are discouraged from even applying for EI.

**8. Permanently eliminate the clawback of separation monies**

Vacation pay, termination and severance monies should not be allocated as earnings. Taking separation monies out of the equation will improve administrative efficiency and service standards, as well as cause requests for reconsideration to fall, as demonstrated by the temporary measures in place during the pandemic.

**9. Improve Working While on Claim rules so that benefits are not clawed back from the first dollar of earnings**

Given low earnings and correspondingly low benefits for minimum wage and low-paid workers, Working While on Claim rules should acknowledge the vital importance of even modest earnings for low-income beneficiaries. Rules should privilege initial employment earnings, protecting benefits from clawback until a minimum threshold is reached.

## **10. Improve governance of the EI program by including the social partners and restoring decision-making power to the EI Commissioners**

The sidelining of Commissioners in EI program administration and decision making has reached the point where too often, Commissioners can no longer expect the accountability of EI program administrators including timely access to information. This has the effect of sidelining the EI premium payers, labour and business, the key labour-market partners represented by the Commissioners and relying on their ability to monitor program administration.

## **11. Broaden the EI program's base by cracking down on employer misclassification**

As the September 2020 Speech from the Throne pointed out, EI must be updated to address specific needs of self-employed and gig workers. Increasingly, employees are misclassified as independent contractors or self-employed. The government should take steps to include app-based work arrangements and increased tax compliance consequences for employers evading EI and payroll deductions, particularly with respect to 'independent contractors' in construction, manufacturing and gig workers in commercial services, as well as widespread abuses in the temporary help agency business.

## **12. Restore migrant workers' access to parental benefits and remove restrictions on migrants' access to regular benefits**

Migrant workers in Canada pay EI premiums, just as Canadian citizens and permanent residents do. Between 2004 and 2012, migrant workers employed in Canada under the Temporary Foreign Worker Program (TFWP) and Seasonal Agricultural Worker Program (SAWP) were able to collect EI maternity and parental benefits. In December 2012, the Conservative government amended the *EI Regulations* to effectively deny these workers access to EI special benefits, in a move that was arbitrary, unnecessary and punitive. The government should immediately restore access to these needed

benefits that migrant workers pay for and reform the TFWP and SAWP to ease restrictions on migrant workers' access to EI regular benefits.

### **13. Permit EI access in more circumstances related to a labour dispute**

Under the *EI Act*, once a claimant has lost or is unable to resume employment for reasons related to a labour dispute, they are disentitled from benefits. However, it is often the case, during a lockout that workplace activities carry on with replacement workers. Locked-out workers suffer lost earnings for no fault of their own and must still replace lost income, while their employers can carry on their activities at limited cost. This inequity should be addressed by allowing workers to qualify for EI benefits when they are locked out and there is no work stoppage. Access to EI special benefits during a dispute should also be reaffirmed.

EI requires an 85 percent resumption of production/service before workers who were not recalled can receive EI benefits. Workers should be able to qualify for EI at the end of a labour dispute if the employer is unable to bring everyone back to work after the dispute is settled and a new collective agreement has been ratified.

### **14. Review the denial of regular benefits for non-teaching periods of teachers on fixed-term contracts**

Although contributing to EI, supply, part-time and new teachers on fixed-term contracts face challenges in accessing benefits once their contracts finish at the end of the school year. If these teachers immediately sign a fall-term contract for teaching work and pay beginning in September, they are ineligible to receive regular benefits during the non-teaching summer months, even if they are available for non-teaching work. This should be reviewed as part of the overall re-evaluation of the EI program.

All of which is respectfully submitted,

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