

CUPE



Canadian Union of Public Employees

Submission to the Standing Committee on
Human Resources, Skills and Social Development and the
Status of Persons with Disabilities

Review of the Employment Insurance Program

April 9, 2021

The Canadian Union of Public Employees (CUPE) is Canada's largest union, with over 700,000 members. CUPE members take great pride in delivering quality services in communities across Canada as they work in sectors representing a broad cross-section of the economy – including health care, education, municipalities, libraries, universities and colleges, social services, public utilities, emergency services, transportation, and airlines.

We thank the Standing Committee on Human Resources, Skills and Social Development, and the Status of Persons with Disabilities for the opportunity to contribute to your review of the Employment Insurance (EI) Program. Income and training supports for workers who are unemployed, ill, or providing care for a loved one are an essential part of any humane economy, in addition to serving as an important economic stabilizer in times of recession or economic hardship. Yet for years, EI has been a broken and inadequate program, excluding far too many of the people it was intended to help and providing too little support to many others.

Providing workers in Canada with adequate income supports and fixing our broken EI program will help Canadians to weather the rest of the COVID-19 pandemic and lay the foundation for a faster recovery.

COVID-19 pandemic response

While the federal government acted quickly and laudably to put into place alternatives to the EI program and to make temporary improvements to EI, challenges remain in providing adequate supports to workers affected by the pandemic.

Return to work/searching for work

The return to EI benefits and the creation of the new Canada Recovery Benefits in September 2020 have forced some workers with greater vulnerabilities to COVID-19 to choose between putting their health at risk or losing their income entirely. Many collective agreements require recalls to happen on the basis of seniority. A worker may not refuse a recall and still collect benefits, even if the employer is not recalling all employees. This means that a worker who is more vulnerable due to their age or immune condition cannot allow a younger, healthier co-worker to return to work instead without sacrificing their benefits.

Furthermore, workers who are immunocompromised but who must leave home for a physical workplace can only stay at home and collect benefits if their employer agrees to put them on leave or lay them off. This creates a significant inequity in which some vulnerable workers have access to benefits while others do not based on the decisions of their employers rather than their individual circumstances.

Recommendations:

1. Allow workers to volunteer to remain on layoff and still collect Employment Insurance and Canada Recovery benefits.
2. Allow workers to collect Canada Recovery Benefits with a medical certificate that demonstrates they are immunocompromised and at greater risk of significant morbidity or mortality due to COVID-19.

Training

Currently, there are workers in sectors like the airline industry that have been decimated by COVID-19 who are unable to access training. They are employed, but inactive because their employer opted to participate in the Canada Emergency Wage Subsidy program. If these workers choose to leave their positions and pursue training for a career in a different field, they will not qualify for regular EI benefits or be allowed to access EI training programs, because they would be considered to have voluntarily separated from work.

These sectors will not return to normal any time soon. In the long run, it would be better for our economy and more cost-effective for federal budgets to support these workers in accessing training now, transitioning them back to full employment in new sectors.

In addition, the current EI Training Support Benefit is too short to provide access to meaningful training. The benefit should be extended to a minimum of 26 weeks to support enrollment in programs that will result in certifiable skills in in-demand fields.

Recommendations:

3. Allow workers who have voluntarily separated from employment for the purposes of training to access EI Regular Benefits and EI-funded training programs.
4. Extend the EI Training Support Benefit to a minimum of 26 weeks.

Service Canada support

Many of our members expressed frustration in obtaining accurate information from Service Canada throughout the course of the pandemic. Although we understand that programs were changing very quickly and Service Canada employees had a lot of new information to absorb, this sometimes resulted in big headaches for workers who were trying to figure out what their options were and what programs they were eligible for. Members reported receiving different information every time they spoke to Service Canada. Employers, meanwhile, did not always understand what their obligations were, particularly when workers needed to move from one type of benefit to another such as moving from the wage subsidy to parental leave.

During the last few months, things have improved thanks to webinars for hard-hit sectors and dedicated phone numbers for workers in certain sectors, such as the airline industry. CUPE recommends that for future emergency situations, Service Canada be more proactive in informing workers in hard-hit sectors what the rules are, in addition to setting up separate phone numbers for sectors such as aviation or fishing where the rules to calculate EI eligibility are different.

Recommendations:

5. Service Canada should engage in proactive information campaigns to hard-hit sectors during emergency situations.
6. Service Canada should set up dedicated phone lines for workers in industries that have different EI rules such as aviation and fishing.

Sickness Benefits

Even in normal times, 15 weeks of sickness benefits is simply not enough. A significant number of workers exhaust the full allocation of sickness benefits before they have completed their treatment or recovered enough to return to work, but do not have access to Long-Term Disability benefits through their workplace and do not qualify for the Canada Pension Plan Disability Benefit.

Labour unions, workers advocacy centres, disability, and health care organizations have all been united in a call for 50 weeks of sickness benefits. The House of Commons has voted unanimously in support of extending sickness benefits to 50 weeks. The Liberal government has committed to extending sickness benefits to at least 26 weeks.

The lack of action at a time when many Canadians with illnesses are without income support due to the COVID-19 pandemic is simply inexcusable. Canadians who are experiencing delays in their treatment due to the pandemic or lengthy COVID illnesses cannot simply live for months on end without income.

Recommendation:

7. Act quickly to extend sickness benefits to 50 weeks and to make the Canada Recovery Benefit available to those unable to seek employment who submit a medical certificate similar to the one required for EI Sickness Benefits.

Access to Employment Insurance

Access threshold

Prior to the pandemic, fewer than half of unemployed workers qualified for EI regular benefits. Access was also highly inequitable, with men more likely than women to qualify, workers in Eastern Canada far more likely to receive benefits than workers in Central and Western Canada, and very low coverage in large urban centres.

The variable entrance requirement (VER) is supposed to reflect the fact that workers in high unemployment regions will find it more difficult to find new work than workers in low unemployment regions. The VER has always been problematic due to the narrow definition of economic regions, which means that between two workers working side by side with the same number of insurable hours, one could qualify for benefits while the other does not on the basis of their home addresses. Furthermore, using a three-month average to calculate the regional rate of unemployment means that there is always a lag in access to benefits whenever unemployment increases.

However, the VER is now completely out of synch with the realities of our modern economy. The rise of remote work, super commuters, and fly-in-fly out jobs (in which employees fly into other locations for periods of work rather than relocating permanently) means workers with certain skills have employment prospects that do not depend at all on the local rate of unemployment. In other places, a low unemployment rate may hide the reality that a substantial proportion of the work is short-term, temporary, or casual contracts with a significant amount of churn. The likelihood of being unemployed is therefore much higher than the rate of unemployment would suggest.

To eliminate the discrimination and discrepancies in access to EI, the VER should be replaced with a single threshold for all workers to qualify, regardless of where they live. Furthermore, to ensure that women and precarious workers have reasonable access to EI, this threshold should not be set too high. CUPE recommends a universal threshold of 360 hours.

Finally, this threshold should apply to all EI benefits, regular and special. There is no rationale for making it harder for women and precarious workers to access caregiving and parental leaves than it is for them to access regular benefits.

Recommendation:

8. Set the threshold for accessing EI Regular and Special Benefits at 360 hours for all workers across the country, regardless of the regional rate of unemployment.

Access for self-employed workers

Too many workers are not truly self-employed but are categorized as self-employed because it is convenient to their employer. The federal government needs to get tougher on misclassifications so that these workers can access EI and other benefits.

Recommendation:

9. Take steps to limit employer misclassification of employees as self-employed or independent contractors.

Access for migrant workers

Migrant workers pay premiums; they should therefore be allowed to collect benefits. The government should roll back the changes banning migrant workers from collecting EI maternity and parental benefits and expand access to EI regular benefits to migrant workers.

Recommendation:

10. Restore maternity and parental benefits to migrant workers and expand access to regular benefits.

Valid job separations

Currently, workers who are deemed to have voluntarily left their jobs are completely excluded from EI benefits. But as we have seen with the pandemic, this excludes many workers who have left the workforce for completely valid reasons that are simply not recognized by our current rules, including immunocompromised workers and workers with caregiving responsibilities. The penalty should be limited to no more than three weeks.

Recommendation:

11. Limit the penalty for workers without a valid job separation to a maximum of three weeks without EI benefits.

Separation payments

Vacation pay, severance, and other termination payments are earned by work performed previously, they are not current earnings. It makes no sense to deny workers benefits that they have paid for with their premiums simply because they are receiving previously earned monies at the time of job separation. It would also significantly simplify the administration of the program if separation payments were excluded from consideration in adjudicating access.

Recommendation:

12. Eliminate the clawback of separation payments.

Benefit Level

For many workers, EI benefits are far too low and leave them well under the poverty line. For other workers, the benefits replace only a tiny portion of their salary because the replacement rate is too low and the level of Maximum Insurable Earnings (MIE) is also very low.

CUPE and our allies have long called for the replacement rate to increase to 60%. The average wages used to calculate the replacement rate should be based on the best 12 weeks of employment for all workers. We also believe the MIE should be increased at a minimum to match the MIE for the Canada Pension Plan.

Finally, the \$500 benefit set by the federal government as a floor during the pandemic should remain the minimum benefit moving forward.

Recommendations:

13. Increase the replacement rate to 60% of average earnings and base the calculation of average earnings on the best 12 weeks for all workers.
14. Increase the Maximum Insurable Earnings threshold at least to the level of the MIE of the Canada Pension Plan.
15. Maintain a minimum benefit for all workers of \$500 per week.

Length of Benefits

One reason why fewer than half of unemployed Canadians are accessing EI is that the duration of benefits is not reflective of the reality of unemployment even in normal times. The variable length of benefits, much like the VER, also fails to respect the reality that the likelihood of finding new employment is influenced by so many more variables than simply the regional rate of unemployment.

Recommendation:

16. Extend the length of regular benefits for all workers to 50 weeks.

Appeals

The Social Security Tribunal (SST) is a broken model of appeals that does not respect the tripartite nature of the EI program.¹ The government has promised to replace the first level of the SST but has made no move to do so. It is also clear that they still do not understand the essential importance of tripartite oversight. The government should move swiftly to restore the Boards of Referees, with oversight exercised by the EI Commission.

Recommendation:

17. Restore the EI Boards of Referees and put oversight of the appeal system in the hands of the EI Commission.

EI Financing

The seven-year break-even mandate for EI premiums limits the program's role in counter-cyclical management of the economy. It makes it difficult to save up funds for economic downturns and limits the capacity of the EI program to respond fully and comprehensively to emergencies. The break-even mandate also appears to have contributed to a reluctance to fix systemic problems, with a focus on micro-changes in premium levels rather than asking whether we are providing the benefits that a strong economy and humane social safety net require.

Furthermore, EI premium belongs to workers and employers. The EI fund needs to be protected so that EI premiums are used only for EI benefits and training.

Recommendations:

18. Eliminate the seven-year break-even mandate and restore the counter-cyclical role of EI premiums.
19. Adopt legislation to protect the EI Fund.

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¹ See the CUPE Submission to the KPMG Review of the Social Security Tribunal for more details: <https://cupe.ca/cupe-calls-social-security-tribunal-be-replaced>.