A FAIR AND UNIVERSAL EMPLOYMENT INSURANCE PROGRAM

BRIEF BY MOUVEMENT ACTION CHÔMAGE LAC-SAINT-JEAN

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About us

Mouvement Action Chômage du Lac-Saint-Jean (MAC) is a not-for-profit organization that was founded in 2001. Our mission is to defend the individual and collective rights of EI claimants in the Lac-Saint-Jean region by:

- Helping claimants deal with various government bodies.
- Informing claimants of their rights and obligations.
- Raising public awareness of the challenges posed by the *Employment Insurance Act* and its impact on claimants.
- Being community experts and advocates for all EI-related matters.

Over the past year, the pandemic has left millions of workers unemployed. This has made us even more aware that our EI system is obsolete, mainly because it no longer reflects today's job market. In the spirit of modernizing EI, we support the demands of the Mouvement autonome et solidaire des sans-emploi (MASSE), an organization that we are a member of.

Here are the main demands of the campaign for a fair and universal EI program:

- Set the required number of hours to qualify for EI to 350.
- Increase the benefit rate to 70% of earnings.
- Increase the minimum number of weeks of benefits to 35.

In addition to the above, we wish to share some more of our pressing concerns.

1. Independent workers and/or company shareholders

For several years, MAC has observed a significant increase in the number of cases of independent workers being reviewed by the Social Security Tribunal. First of all, many claimants are being falsely labelled as independent. For example, one claimant who owned 11% of the shares of the company that she worked for was denied EI on the grounds that she owned the company. Another case that we dealt with involved a man who owned shares in his wife's company and was denied EI, even though he worked elsewhere. The Commission's arguments were based on an assessment of whether a woman is capable of running the company by herself. And recently, a municipal councillor was told that she was independent because of her income as a councillor ($200/month).

Every worker who owns shares in the company where they work must undergo a Canada Revenue Agency (CRA) assessment when they are receiving EI. After the CRA completes its assessment, it determines whether that employment is insurable. If so, claimants are normally entitled to EI.

Service Canada then studies the files of independent workers to determine unemployment status. If a worker has shares in the company, they are also considered as an employer. As a result, on the one hand, claimants are told that they must pay EI premiums, while, on the other, Service Canada shoehorns them into unemployment and refuses to pay them EI benefits.

We are very concerned about the criteria that are being used to define unemployment status because they are left to the interpretation of each Service Canada agent. It is essential that solutions, including guidelines, be considered in order to properly apply the law and regulations in a way that is fair to all claimants.

Unemployment status

The six following criteria are assessed in order to determine whether someone is unemployed:

a) time spent
b) the nature and amount of capital and other resources invested
c) the financial success or failure of the employment or business
d) the continuity of the employment or business
e) the nature of the employment or business
f) the claimant's intention and willingness to seek and immediately accept alternate employment

Time spent

To determine whether a claimant is working for a company to a limited extent, their employment should, according to the current procedure, be compared with that of another person in a similar job. If a claimant normally works 40-hour weeks and 10 hours or so per week in the off season, can we consider them to work for their company to a limited extent? If they buy materials for a future contract and have repairs done on their vehicles and tools, will they be considered to be working excessively, no matter how long this takes?

Nature and amount of capital and other resources invested

In one case that we defended, the three shareholders of a construction company invested approximately $10,000 each. The company had no business offices or inventory due to the nature of the work. Although the Commission determined that the investment was significant, the Tribunal found that this factor objectively demonstrates a limited involvement in the company. Therefore, two different administrative bodies had two different interpretations of the same criterion.

Financial success or failure of the employment or business

This criterion is questionable, because anyone starting a business wants it to be successful. So, how can this criterion be applied objectively?

Continuity of the employment or business

A business could be somebody's main livelihood. In the case that we previously mentioned, which is of interest to us, this is a possibility. In 2016, the three shareholders were out of work for 11 to 13 weeks, whereas, in 2017, they were out of work for 20 to 21 weeks. The company cannot therefore be construed as being their main livelihood during that period.

Nature of the employment or business

Since this construction company was specialized in roofing, the Tribunal Chairperson recognized that it cannot operate year-round. Once again, two administrative bodies interpreted this criterion differently.

Claimant's intention and willingness to seek and immediately accept alternate employment

In the same cases defended at the review stage or before the Tribunal, the claimants stated that they were looking for work in other fields. They produced evidence, but they never found a suitable job and, as a result, did not work elsewhere. In these cases, administrative bodies used this fact to argue that the claimants had no intention of working outside their company.

We believe that guidelines must be established so that the officers who analyze EI claims can do their jobs based on tangible criteria. That way, they will be able to determine more objectively whether a claimant, or a company owner or shareholder, is entitled to EI.

2. Overpayment and write-offs

In September 2017, Vanessa was diagnosed with multiple sclerosis. After the initial shock and various hardships that she endured, she applied for social assistance. The body regulating social assistance then forced her to apply for sickness benefits. She knew that she was not entitled to them, but she had no other choice. In mid-December, Service Canada approved her claim for EI sickness benefits, which started being paid out on November 12, 2017. She then contacted Service Canada, which confirmed that everything was in order and that she was entitled to those benefits.

In April 2018, she received a notice of debt from Service Canada asking her to pay $6,150 to reimburse her 15 weeks of sickness benefits. She was told that her claim was established with a record of employment that was mistakenly entered into her file. How could Service Canada have made this mistake? Now, her troubles truly began: as Revenu Québec and Service Canada battled it out, Vanessa became caught in the crossfire of administrative procedures.

When claimants make mistakes, it is normal for them to repay what they owe. This same principle should apply to Service Canada when they make a major mistake, especially in this case where it involved Vanessa's social insurance number, which is a unique personal identifier. Service Canada should have owned up to its mistakes and write off the benefits without placing the burden on Vanessa.

3. Sickness benefits

The 15 weeks of sickness benefits are insufficient in many cases. Regardless of the health issue, unforeseen circumstances, including surgery, cancer and mental health complications, can prolong someone's illness. Recovering patients face a great deal of stress. Unfortunately, many employers do not offer wage insurance, and many workers cannot afford wage insurance because their jobs pay too little.

It is essential that all parties vote now in the House of Commons to provide 50 weeks of EI sickness benefits and that doctors be given the discretion to determine the number of weeks of benefits, up to a maximum of 50, regardless of the illness.