



November 2, 2015

Honourable John C. Murray & Mr. Mitchell
Special Advisors, Changing Workplaces Review

Re: Submission to Ministry of Labour Consultations: Changing Workplaces Review
Supplementary Information

Dear Sirs,

Thank you for the opportunity to meet with you to present our response to the questions posed in the Changing Workplaces Review consultations. We are pleased to provide you with supplementary information in response to your questions.

About Home Care Ontario

Home Care Ontario, the voice of home care in Ontario™, is a member-based organization with a mandate to promote growth and development of the home care sector through advocacy, knowledge transfer, and member service. Home Care Ontario members include those engaged in and/or supportive of home-based health care. In Ontario, service provider organizations (SPOs) are responsible for providing nursing care, home support services, personal care, physiotherapy, occupational therapy, social work, dietetics, speech language therapy and medical equipment and supplies in the home to individuals of all ages. An estimated 58 million hours of publicly and privately purchased home care service is provided annually across the province.

Home Care Ontario members include 42 SPOs and 36 associate members. A list of Home Care Ontario members can be found at <http://www.homecareontario.ca/our-members/list-of-members>

Personal Emergency Leave Days (PEL) under the ESA

There is poor understanding amongst employers and employees about Personal Emergency Leave Days. The ESA states that if the employer provides a greater benefit than that provided through the employment standard, then the employer's provision applies.¹ It is not a cumulative benefit.

Home Care Ontario members report confusion about the entitlement. From a small sampling of members we have confirmed that staff know that they are permitted a leave but do not understand the specifics of the Act. Many staff believe that the PEL is in addition to other leaves provided by the employer to which they may be entitled. Many also believe that the benefits are cumulative. The Association would not want to see this misperception extended or complicated through the introduction of additional leaves. ***The recommendation is for greater clarity and a simpler process of assisting employers who are attempting to determine if their benefit is greater than the standard.***

Casual Workforce

The majority of staff (approximately 80%) within home care work on an elect-to-work/casual basis and as such can decline or cancel work without penalty. This model is used extensively as it allows for cost-effective service delivery and helps the home care system to meet the demands of clients, staff and the needs of the larger health care system. Elect-to-work provides maximum flexibility to

¹ <http://www.labour.gov.on.ca/english/es/faqs/general.php#agreement>

both the employer and the employee in order to efficiently respond to the needs of clients in their own homes. Elect-to-work allows employees to choose their hours of work enabling them to balance personal commitments. ***The model also allows staff to take time off to address personal emergencies as needed.***

Home care funding in Ontario is organized so that service providers in the home care sector can only bill when service is delivered to the client. In the model, there is no government funding allowed for time not spent on client care. This funding and referral model requires maximum flexibility on the part of both the employer and the employee. Because set hours of work are not guaranteed by the employer and ‘availability’ is not guaranteed by the employee, employers do not pay workers for time not spent working, and employees can withdraw their ‘availability to work’ with no repercussions from the employer.

Cost is not the only reason for elect-to-work as a preferred employment model for the community. Clients in home care are considered to be ‘consumers of care’ to a far greater degree than ‘patients’ in the institutional or long-term facility sector. Therefore, home-based health care and support services are not delivered in the same way, or in the same environment, as institutional care. SPOs are obligated to defer to clients who function more independently and respect that they are in effect, a “guest” in the home of their client. As a result, home care staff exercises the flexibility to accommodate their clients’ requests for care – a key feature of elect-to-work.

Client need and preference determines the timing of the home care visit. In home care service, it is very common to have staff attend clients early in the morning to assist with normal morning routines and again, in the evening prior to going to bed. Given this circumstance, it is clear that, an employer could have multiple clients all wishing to receive their morning and evening service on the same day and at the same time of day. To respond to these clients, several employees are required as the hours of work are concurrent, not consecutive. Also, many clients request changes in the timing of their visits in order to accommodate the other events in their lives. Provided the treatment plan is not compromised, the home care provider is both obligated under the CCAC contract, and expected to adapt flexibly to the service to meet the needs and wants of the client. Elect-to-work enables these adaptations readily minimizing changes in caregivers.

Small employers

Given the acknowledged challenges of maintaining small businesses (employers with less than 50 employees), Association members recommend that the PEL not be extended to this group. Small employers require flexibility to accommodate the needs of their employees and as home care SPOs would maintain a high percentage of elect-to-work staff for the reasons outlined above.

Temporary Help Agency Designation

We are using the opportunity of this supplementary submission to reiterate the need for ***home care SPOs to be expressly excluded from the definition of a temporary help agency.*** SPOs are at risk of being implicated by legislation that is intended for organizations that truly provide ‘assignment employees’. The consequence could compromise the health and social care that SPOs provide beyond the services contracted by the CCAC.

Background

A temporary help agency is a company that sends its employees on temporary work assignments to its client businesses. The temporary help agency is the actual employer for the purposes of the ESA.² Temporary help agency employers are governed by ESA, as are most employers in Ontario.^{3,4}

² Temporary Help Agency Employees Employment Standards Fact Sheet, November 2009

https://www.labour.gov.on.ca/english/es/pubs/is_tha.php

³ Ibid

Members of Home Care Ontario are erroneously assumed to be “temporary help agencies” because they employ workers that are given assignments to work in a client’s setting. These clients may include CCACs, institutions such as hospitals, long term care facilities, retirement homes, hospices, group homes and assisted living facilities, and individual Ontarians. As individuals, Ontarians may retain SPOs to provide care while in facility-based care, typically to supplement the services already provided.

Home care SPOs are entirely and exclusively responsible for the standard of service delivered by their staff. SPOs conduct careful selection of staff, ongoing and regular supervision, and continuous education. Staff must adhere to the policies and procedure of their employer and consult with supervisors with the client’s requests are inconsistent with employer expectations. SPOs adhere to Ontario’s labour practices and occupational health and safety standards. SPOs maintain staff liability coverage that includes appropriate worker compensation insurance.

Members of Home Care Ontario are unique in that they annually complete the Association’s Quality Template that establishes a self-evaluated level of compliance with Home Care Ontario’s Standards. This is not a legislated requirement, however members of Home Care Ontario believe that reflective self-assessment and evaluation is an important way of encouraging continuous quality improvement. The Association also strongly endorses accreditation and at this time three quarters of members have achieved accreditation and/or are registered with ISO.

The ESA currently provides a specific exception applicable to the home care industry:

- a) Where an ‘assignment employee’ is ‘assigned’ to perform the work ‘under a contract’ between a Community Care Access Corporation (CCAC)⁵ and the worker or the worker’s employer; ***and***
- b) The ‘assignment employee’ is providing professional services, personal support services or homemaking services as defined in the Long-Term Care Act, 1994 (renamed the Home Care and Community Services Act, 1994 as of July 1, 2010)⁶.

Given the relationship of home care SPOs with their staff and ongoing accountability regardless of the setting of service, this exemption needs to be expressly extended across the health care system. A better solution would be to confirm that home care SPOs do not fall under the definition of a temporary help agency.

Bill 18

Bill 18 is designed to protect the interests of the vulnerable worker. As responsible employers, Home Care Ontario SPOs fully support the protection of workers’ rights to appropriate pay and safe working environments. The provisions in Bill 18 governing the *Workplace Safety and Insurance Act, 1997* (WSIA) that appear in Schedule 5 of the Bill, however, have serious potential for deterring the use of SPOs within the broader health system and, by so doing, could ultimately compromise health care service delivery to Ontarians.

⁴ The ESA does not apply to employees in sectors that fall under federal jurisdiction, such as airlines, banks, the federal civil service, post offices, radio and television stations and inter-provincial railways; individuals performing work under a program approved by a college of applied arts and technology or university; a secondary school student who performs work under a program authorized by the school board that operates the school in which the student is enrolled; people who do community participation under the Ontario Works Act, 1997; police officers (except for the Lie Detectors part of the ESA, which *does* apply); inmates taking part in work or rehabilitation programs, or young offenders who perform work as part of a sentence or order of a court; people who hold political, judicial, religious or elected trade union offices.

⁵ Within the meaning of the Community Care Access Corporations Act, 2001

⁶ “Homemaking” services include housekeeping, laundry, ironing, shopping and banking services, preparing meals, and planning menus, among others. “Personal Support” services include assistance with personal hygiene activities and the routine personal activities of daily living. “Professional Services” include nursing, social work, physiotherapy, and dietetics services are considered to be professional services.

Workplace Safety and Insurance

Bill 18, which received Royal Assent in November 2014, will limit the use of temporary health care staff as it imposes the risk of additional costs on the health care facility in a time of cost constraint. Bill 18 provides for the removal of the costs associated with a temporary worker's injury from the experience rating of the actual employer (the temporary help agency) and place it with the client employer contracting with the temporary help agency. In the context of health, this transfer of cost and responsibility would move from the home care SPO employer to the health care institution (e.g. long term care facilities, hospices and hospitals).⁷

Health care institutions within Ontario adhere to the Occupational Health & Safety Act and to the Employment Standards Act assuring their staff with the inherent protections. It is unreasonable to expect these organizations to assume responsibility for SPO worker injury costs regardless of the circumstance and, as a result, to be responsible for securing relief from the SPO through cost transfer. Home Care Ontario SPOs recognize that they share accountability for safety and, as the employer of staff, have responsibility to their employees and for pursuing cost transfer if they believe it is warranted.

Home Care Ontario members all carry WSIB insurance⁸ and are fully accountable for their workers' injuries. These SPOs provide extensive training to staff and work closely with their clients to ensure a safe work environment. Where costs should be legitimately transferred, the SPO follows the existing processes in place through the WSIB.

Bill 159

While not passed into legislation prior to the proroguing of government in 2014, this Bill is another example of legislation that could be harmful to the home care sector. The provisions within Bill 159 intended to establish a licensing regime for temporary help agencies, set minimum pay rates based on the amounts charged to the agency's clients, prohibit operations without a license and limit the hours of work provided to clients. The Act also provided for limitations to be imposed by a Director.

The intent of ensuring quality, fair compensation and avoiding exclusive reliance on agencies providing "assignment staff" has the unintended consequence of compromising the care delivered by home care SPOs to institutions such as hospitals, long term care facilities, retirement homes, hospices, group homes and assisted living facilities, and individual Ontarians.

Home care SPOs are usually incorporated entities, and can be one of the following: a non-profit organization, a privately held organization, a municipal government or an aboriginal organization. These employers provide important health and social service by assigning to staff to provide care in a variety of settings as outlined above. They pay competitive wages and offer a range of extended benefits. They are vital to ensuring provision of health care services and experience various levels of performance auditing, including by Health Quality Ontario. There can be no interruption in home care SPO operations without seriously disrupting the system of health care in the province.

Conclusion

Home Care service provider organizations are vital to the delivery of health care in Ontario. They provide health care services to individuals in their homes, however so defined. Members of Home Care Ontario subscribe to rigorous performance standards and are fully accountable for adhering to

⁷ The Act is not clear as to the possibility of burdening individual Ontarians and their families with these costs if they choose to retain care privately in their own homes, although it is our understanding from the Minister of Labour's office that this is not the intent.

⁸ This is a requirement for membership of Home Care Ontario

all labour legislation. ***Bills 18 and 159 are recent examples where home care SPOs could be seriously impacted because of being lumped under the temporary help agency designation.*** The risks to the home care sector and the health care delivery system are too great to ignore.

Thank you for your interest in our submission. We look forward to your report and further consultation.

Sincerely

A handwritten signature in black ink that reads "Sue VanderBent". The signature is written in a cursive style with a large initial 'S' and 'V'.

Sue VanderBent
CEO