Reforming EI for the 21st Century

A Memorandum to the Minister of Employment, Workforce Development and Disability Inclusion, the Minister of Finance, the Prime Minister's Office, the Privy Council Office, and the Bank of Canada

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For social and economic justice

INTRODUCTION

Canada's Employment Insurance (EI) system is predicated on the need for automatic economic stabilization at times of labour market upheaval. A well-functioning system of unemployment insurance is one of the most effective means of quickly and significantly stabilizing communities and the larger economy when unemployment is on the rise.[2] The Depression of the 1930s demonstrated the economic folly of relying on meagre means-tested social assistance.

Our country's EI system is also mandated to meet other broad economic and social objectives including income maintenance during episodic separations from work such as parenting or sickness. There's a heavy economic price to pay in countries like the U.S. where this is not done.

But there are very significant weaknesses in our current EI system. The pandemic put a spotlight on them, as evidenced by the need to introduce emergency COVID benefits.

The IMF, among others, recently recommended that Canada strengthen EI's functioning and introduce "a more systematic framework for cyclical stabilization."[3]

Certainly, working people argue we need reforms. Prior to the pandemic, only 4 out of every 10 unemployed workers were receiving EI benefits in any given month. The rest of them were shut out, including many who had paid EI premiums from their first hour worked.

We haven't had systemic reforms for a generation. Unemployment insurance has gone through two watershed overhauls in the last half century. The first, in 1971, dramatically expanded access and benefits. A generation later, in 1996 the Unemployment Insurance Act was renamed the Employment Insurance Act, following the withdrawal of federal contributions in 1990 and four rounds of cutbacks. That was a quarter century ago.

A review of the current system has been promised since 2015. Here are the four main elements that need reform:

- EI Access and Eligibility
- Benefit Levels
- Benefit Duration
- Financing Reforms

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[2] The UI System as an Automatic Stabilizer in Canada
https://publications.gc.ca/collections/collection_2015/rhdcc-hrsdc/LU2-153-209-1995-eng.pdf

[3] IMF 2021 Country Report
www.imf.org/en/Publications/CR/Issues/2021/03/17/Canada-2021-Article-IV-Consultation-Press-Release-and-Staff-Report-50273

EI ACCESS AND ELIGIBILITY

Entry Rules: Insurable Hours

The current threshold to access EI benefits is a uniform 420 hours. The underlying calculation assumes a 35-hour work week (multiplied by 12 weeks, the historic requirement). But over time more workers have struggled to find 35 hours of work on a regular basis. In 2019, pre-pandemic, payroll employees averaged 30.1 hours weekly including overtime. The majority were employed in service jobs with an average 28.3 hours.[4] **We recommend a uniform entry requirement of 360 hours or 12 weeks (30 hours x 12 weeks = 360 hours) for both Regular and Special Benefits.**

The common entry rule should be retained and not vary across regions. A variable entrance requirement disadvantages low-paid, part-time and on-demand workers living in large cities where unemployment rates are relatively low. This particularly reduces access for workers in food service, accommodation, hospitality and retail industries.

Systemic Lack of Access

Although reforms to insurable hours entry requirements and benefit durations will improve EI access for many, some categories of workers are systematically excluded from access.

Misclassifications

We need to tackle the widespread misclassification of employees as independent contractors. These employees are denied access to EI. **We recommend a presumption of "employee" status and the introduction of the ABC test in the EI Act, CPP Act and Canada Labour Code.**[5]

We further recommend proactive measures to enforce the law since we cannot rely on individual complaints to enforce misclassifications. For example, a workplace blitz can be effective, particularly when accompanied by publicizing employers who are in violation of the law and a registry of employers convicted of breaking the rules as has been done in some worker compensation systems. Given their role in labour supply chains for some companies, temporary help agencies should be targeted for particular attention.

Access for Gig/Platform-Based and Self-Employed Workers

There is growing concern that more workers are experiencing an escalation of precarious working conditions through the so-called "gig economy" because of the pandemic and potentially in its aftermath. The fact is we don't know how big that problem is. We have many different measures of how many people are engaged in such work, based on different data sources, which show a range from an 3.5%[6] of

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[4] Statistics Canada, https://www150.statcan.gc.ca/t1/tbl1/en/cv.action?pid=1410020801
[5] See also, Goldblatt Partners, Public Consultation on Gig Work in Canada
[6] Bank of Canada Staff Analytical Note, https://www.bankofcanada.ca/wp-content/uploads/2019/02/san2019-6.pdf

the labour force in Canada (in 2018) to more than 8%[7] of the job market (in 2016). The pandemic has made both the levels and trends unclear, as some forms of gig work have increased while others have declined.

The Government of Canada has spent much time considering how to extend special benefits to workers who are not deemed employees (for parental leave in particular, as well as sickness leave and possibly training leave).

Access to regular benefits is more difficult when workers are underemployed or unemployed, especially if their hours of work are variable and/or non-insurable. It may be that a minimum monthly payment would best stabilize purchasing power. This could be through an expansion of eligibility to EI's Working While on Claim provisions, or the creation of a similar program. It has been also suggested that this goal can be accomplished by expanding access to the Canada Workers' Benefit. This is problematic, as it may unintentionally subsidize the expansion of low-paid, precarious or volatile employment.[8] We're left with questions about whether a form of social insurance is appropriate (paid for by premiums from workers and employers) or a taxpayer subsidized, federally financed income support program. It's one of the thornier issues associated with "modernizing" income supports for the 21st century. While no clear answers have emerged as yet, the expansion of social protections, through improvements in EI eligibility, benefit levels and duration will go some way to addressing the problem. More importantly, reducing the misclassification of workers as self-employed contractors is the first order of business.

Punitive Disqualifications

The current system presumptively disqualifies workers from all EI benefits when an employer states on the Record of Employment that they quit or were fired. Approximately two-thirds (63%) of EI claim disqualifications are for "quit/fire" reasons. This includes workers who leave their job to return to school, to attend to family responsibilities or due to workplace harassment. Some employers misclassify constructive dismissals and firings 'with cause' thereby denying workers access to benefits. Although disqualifications are subject to investigation and appeals, these are protracted processes and appeals are difficult to win. **We recommend a penalty of not more than 3 weeks, as was the case with UI in the past - sufficient to provide a disincentive to quit, but not enough to deny help entirely.**

Expanded Access for Migrant Workers

If you pay into a system, you should be able to draw from it. This simple principle is systematically denied to the majority of migrant workers, even as Canadian employers have increasingly relied on migrant labour over the past two decades. Although they pay into the EI system, migrant workers are generally unable to draw Regular or Special benefits for two main reasons: their fluctuating legal status, and their inability to access the system due to language, administrative and technical barriers such as the lack of internet access to apply and report biweekly. When a job ends for a temporary foreign worker, so may their work permit and social insurance number. There are similar problems for international students

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[7] Statistics Canada Analytic Branch Research Paper, Dec.2019, https://www150.statcan.gc.ca/n1/pub/11f0019m/11f0019m2019025-eng.htm

[8] Atkinson Brief, Maximizing Potential: Framework For Recovery in a Slow Growth Economy, Sept. 2020 https://atkinsonfoundation.ca/site/uploads/2020/09/Maximizing-Potential-Final-Brief.pdf (See Appendix C)

when the school term ends, and their work permit becomes defunct. However, as we saw in the recent case of farm workers from Trinidad who were issued open permits, these barriers are surmountable.[9] **We recommend that the systemic barriers to migrants' access to Special and Regular benefits be removed and, further, that Service Canada establish a special help bureau to assist migrant workers to navigate the system and reduce the barriers to their access.**

BENEFIT LEVELS

Beginning in 1994, the income replacement rate for the EI-eligible unemployed was reduced to 55%, a historic low and one of the lowest in the OECD.

Very recently, during the pandemic, the Canada Emergency Wage Subsidy offered a 75% income replacement rate, and during the 2021 election, the Conservative Party of Canada proposed a 75% EI income replacement rate during recessions.

We recommend that the income replacement rate be increased to two-thirds (66.67%) of insurable earnings. Indeed, this was the benefit rate for UI between 1971 and 1978, and is still the income replacement rate used today in many workplace sickness insurance plans.[10]

Even this increased rate will be insufficient for people working at the minimum wage. Their very considerable reduction in income can't be easily addressed with careful budgeting. It means doing without essentials. As a result, EI is not a realistic option and consequently not accessible for many of these workers. This creates constant pressure to find yet another low-paid job with a high risk of layoff, with no support to look for better options.

The current minimum benefit of $300 a week has sustained individuals, households and even local economies. Prior to the pandemic, only 8.3% of Regular EI claimants had a benefit rate of $300 or less.[11] Providing a benefit floor for such workers will improve EI as an income replacement program that effectively stabilizes purchasing power and the economy. A permanent minimum benefit would significantly benefit low-income workers, especially women, youth and racialized workers. **We recommend the minimum benefit be continued.**

Maximum Insurable Earnings are scheduled to rise to $60,300 on January 1, 2022. Adjusted for inflation, this is less than the maximum in 1996,[12] a quarter century ago, when the MIE was $39,000. Since the maximum benefit is tied to maximum insurable earnings, moderate and higher paid workers are "less" covered than they were 25 years ago. 49% of claimants were at the Maximum Benefit Rate in 2020.[13]

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[9] Toronto Star, Stuck in Canada, hundreds of migrant farm workers get help from the federal government, Dec. 2020 www.thestar.com/news/canada/2020/12/16/stuck-in-canada-hundreds-of-migrant-farm-workers-get-help-from-federal-government.html

[10] For example, search under the term "weekly indemnity" here https://sp.ltc.gov.on.ca/sites/mol/drs/ca/Search/Pages/AdvancedSearch_en.aspx

[11] 2020 EI Monitoring & Assessment Report at page 81 www.canada.ca/content/dam/canada/employment-social-development/programs/ei/ei-list/reports/2019-20-EI-MAR-EN.pdf

[12] Employment Insurance Act, 1996 https://laws-lois.justice.gc.ca/eng/acts/e-5.6/page-2.html

[13] 2020 EI Monitoring & Assessment Report, *op.cit.*

We recommend raising Maximum Insurable Earnings to $83,500 to conform with 2021 Maximum Insurable Earnings used by the Quebec Parental Insurance Program. This will also infuse the EI Account with additional funds.

BENEFIT DURATION

While we recommend a uniform entry requirement for Regular and Special EI benefits, irrespective of unemployment conditions in the local labour market, there is a logical rationale for the EI Act's variable benefit durations for Regular benefit claims based on the regional unemployment rate and a claimant's insurable hours.

Regular Benefit claim duration is currently calculated using a grid with 35-hour increments.

- **We recommend that the grid for Regular claim durations be re-calculated in increments of 30 hours[14] (replacing the current 35-hour increments)** and using a new 360-hour base. This is fairer given today's job market and will provide modestly longer claim durations.
- **We recommend permanently extending the maximum benefit period from 45 to 50 weeks in all regions.** This will provide greater security for workers who need it most for labour market re-entry with high-quality job matches.
- **We recommend extending the current 14-week minimum duration to 18 weeks**. This would help reduce job churn for those in precarious work who tend to have lower insurable hours and therefore shorter claim durations.
- **We recommend the 50-week maximum for combined Regular and Special benefits be eliminated and the reference and benefit period extended to at least 104 weeks.** This will particularly benefit women, the majority of maternity, parental and family care claimants.

FINANCING EI

Restoring mandated government contributions to the EI Account will be critical to supporting the needed reforms as well as ensuring EI is once again at the ready to fulfill its automatic stabilization role. This is also consistent with EI as a tripartite social insurance program, which is the norm in the advanced economies. In its last full fiscal year of contributions – 1989-90, just as a recession unfolded that proved to be prolonged – the federal government provided $2.42 billion, not adjusted for inflation.[15] From 1941 to 1990, the federal government sometimes provided a share of costs as a partner, along with employers and employees, sometimes financed specific aspects of the program, whether extended regional benefits, or the initial benefits received in periods of high unemployment.[16] Without specifying the formula for federal contributions, **we recommend restoring a mandated government contribution to the EI program.**

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[14] Average of 30.1 hours weekly in 2019 www150.statcan.gc.ca/t1/tbl1/en/cv.action?pid=1410020801
[15] Employment Insurance Financing, Library of Parliament https://publications.gc.ca/site/archivee-archived.html?url=https://publications.gc.ca/collections/collection_2016/bdp-lop/bp/YM32-2-2014-89-eng.pdf
[16] A quick history of the federal role in EI up to 1998 can be found at Statistics Canada https://www150.statcan.gc.ca/n1/en/pub/75-001-x/1998002/article/3828-eng.pdf

A FINAL NOTE: THE ROLE OF EI IN STABILIZATION AND A MORE RESILIENT ECONOMY

Since the Global Financial Crisis of 2008-9, we have become heavily reliant on monetary policies to stabilize and strengthen the economy. Ironically, central bankers have asked governments to consider more robust fiscal policies.

Yet the heavy lifting by monetary and fiscal policies is not needed to the same extent when social insurance for temporarily unemployed workers is operating effectively as an automatic stabilizer, reducing losses in both employment and GDP at times of stress in our labour markets. For the past few decades EI has not been functioning optimally in this role.

We recognize that the relative emphasis on income support and earned income is an increasingly difficult and politically fraught task, particularly during an era of population aging. Maximizing our economic potential requires that workers have the opportunity to optimize skills, sometimes by finding the right job fit, and sometimes by upgrading skills or re-skilling entirely. However, labour shortages will increase as more workers exit the labour force than enter it. With only 1.7 working aged persons available to support each person too old and too young to work by 2025[17] (down from 2.3 in 2005 and projected to fall to 1.5 by 2048) we will need all hands on deck to maintain the country's economic potential and our collective quality of life. Reaching the right balance between income support and earned income is critically important to the success of our individual and collective economic and social future.

[17] Statistics Canada, Population Projections for Canada, Section 2: https://www150.statcan.gc.ca/n1/pub/91-520-x/2014001/section02-eng.htm Data is for Figure 2.7's illustration of the observed and projected dependency ratio, 1921 to 2063 https://www150.statcan.gc.ca/n1/pub/91-520-x/2014001/c-g/desc/desc2.7-eng.htm