



## **SEIU Recommendations for Occupational Health and Safety Expert Panel**

### **Right to Know: Commitment to Health and Safety Training for ALL Workers**

We want safer, healthier workplaces where workers can fully participate and exercise their rights. Worker health and safety training must go beyond simply covering the basic minimums for the majority of workers (i.e., being able to “adequately perform their [work-related] tasks”; and “acquaint a worker...with any hazard in the work”). We recommend expanding health and safety training so all workers can act with confidence and competence on their legal rights and responsibilities as provided by occupational health and safety law. **ALL employees** should receive comprehensive health and safety awareness training so they are familiar with the rights and responsibilities of all workplace parties. Additional training may be required in some workplaces to ensure a safe and healthy work environment and compliance with the law.

The right to know about workplace hazards is a right shared in Canada by most workers. But laws differ on whether employers have to tell workers about other specific workplace hazards, like hazards often found in offices, the hazard of violence, or the hazards of working alone. Laws also differ on whether employers have to train workers on ways that make work safer and healthier.

Homecare and property service workers encounter many workplace hazards not contemplated by standard health and safety training. The nature of their work puts them in very unique situations. We want Ontario to be a leader in equipping workers with the knowledge they need to work as safely as possible. By knowing about workplace hazards, workers can make sure employers make work safer, provide protection to workers, and give training so that workers can work with the smallest possibility of injury or illness.

### **Right to Participate: Joint Health and Safety Committees in Non-standard Workplaces**

A key aspect of the Occupational Health and Safety Act is the right to participate in decisions affecting workplace health and safety. A Joint Health and Safety Committee is a forum for labour and management to work together to solve problems that arise. In smaller workplaces, with fewer than a specified number of employees, workers don't have the same voice. Hazardous working conditions, however, can harm workers and impact a business' bottom line whether the workforce consists of five or 500 employees.

We recommend expanding the use of multi-workplace joint health and safety committees (pursuant to subsection 9[3.1], 9[3.2] and 9[3.3]) to meet the needs of our



members in non-standard workplaces. In the case of homecare workers, the individual is working alone in clients' homes within a specified geographic area. And in property services, cleaners and security officers often work in isolated conditions.

Rather than waiting for the employer or constructor to first request approval for a multi-workplace joint health and safety committee, **both** the employees and the employer must be able to initiate a request of the Minister. The same considerations will be taken into account when determining if a multi-workplace joint health and safety committee should be established.

Establishing multi-workplace joint health and safety committees will encourage the active participation of the employer and all employees in the prevention of accidents and the promotion of occupational health and safety in the workplace. Regardless of workplace size, all workers should enjoy the same rights when it comes to health and safety.

#### **Right to Refuse Unsafe Work: Proper Procedures and Risk Assessment**

A worker has the right to refuse unsafe work and step away if she or he believes the physical condition of the workplace or workplace violence is likely to endanger herself or himself. The right allows the worker to have the refused work investigated, and repaired if it's dangerous. During the investigation and repair, the right provides that the worker receive pay. And with the right to refuse, a worker is protected from an employer's possible reprisal since it's illegal for an employer to fire or discipline a worker who refuses work she or he believes is unsafe. Occupational health and safety law explains this.

For homecare and property service workers, however, the situation is a bit different. While the right to refuse unsafe work is available through the law, in reality, it's a right that's difficult for precariously employed workers to use. They face high levels of job insecurity and are afraid of losing their scheduled hours/shifts. In practice, if a homecare worker refuses to provide service because of unsafe conditions in the client's home, all she can do is forgo her wages and travel time. We recommend more clearly defined procedures to deal with hazardous conditions experienced by homecare workers in clients' homes.

In addition, risk assessment is a proactive approach to health and safety. It identifies hazards and controls risks before harm occurs. For homecare workers, it is currently up to them to do a risk assessment of the client's home on their first visit. That means they have already entered the home without all the information they need to ensure their own safety. We recommend that Community Care Access Centres (CCAC) include a risk assessment when they are determining client eligibility, assessing client needs, developing a plan of service, and providing or arranging for professional, personal



support and homemaking services. In addition, homecare clients should sign a waiver that grants the Ministry of Labour or local health authorities the right to access the private residence at which the homecare service was requested and provided in case the homecare worker believes the working environment is in hazardous condition.

### **Changing Needs of Ontario's Workforce**

As the population of Ontario and especially the metropolitan areas receiving more and more immigrants, the Ministry of Labour needs to revise its approach to working with newcomers. In particular, immigrants here without status are particularly vulnerable to exploitation and employers are willing to use that information when needed. Threats of retaliation for making complaints around health and safety issues are common. There is a chilling effect which immigrants without status face when they are threatened with deportation. Immigrants without status live in constant fear they will be turned in to immigration authorities by anyone who knows or suspects their status.

Employers understand the vulnerabilities of immigrants without status and will exploit it because there are no repercussions. While an immigrant here without status stands to lose their livelihood, family and return to the country they fled, the employer suffers no consequence. We have heard accounts of employers not paying statutory wages, termination without cause, cutting hours without notice, assigning the most dangerous tasks and overall intimidation of this vulnerable population. Many workers without status do not feel they can come forward with their concerns. To call this situation that immigrants without status find themselves in – precarious, is a way to describe the physical and emotional turmoil they face every day.

Employment Standards, Occupational Health and Safety and workers' compensation laws are silent on immigrants here without status. There is no explicit language which bars immigrants without status access to their rights as workers. However, many immigrants without status fear their employers will retaliate with deportation if they file a complaint. With such high stakes for the worker, many complaints and unsafe working conditions go unreported.

- ***Don't Ask, Don't Tell***

One tool to aid in helping to maintain safe workplaces is to bring in a confidentiality policy for all Ministry of Labour and Workplace Safety and Insurance Board employees to never ask a worker about their immigration status, and should they discover the worker's status to never disclose that information to federal authorities.

No person, regardless of their immigration status, should have to fear being reported to immigration authorities and deported for accessing basic services for themselves and their families. ESA, OHS and WSIB apply to all workers. We



recommend the adoption of a provincial “don’t ask, don’t tell” policy for workers coming forward with complaints about employer violations. It would send a signal to employers that they cannot intimidate their workers on the basis of immigration status.

Various municipalities in the US have adopted similar policies. An example of such a policy has been in effect in New York City since 2003. Mayor Bloomberg signed Executive Order 41 into effect which prevents any city employee or police officer from inquiring about a person’s immigration status. City officials realized that undocumented immigrants had a real fear of being reported to immigration authorities by police officers and city employees. Keeping the nature of a person’s immigration status confidential protects the public safety. If crimes, or in this case, workplace hazards continue to go unreported, the MOL and WSIB cannot enforce the laws that are already on the books. Providing confidentiality to immigrants without status who report workplace violations is a step in the right direction in improving health and safety in the workplace especially for immigrant workers.

- ***Whistleblower Protection***

There is immunity for anyone performing their duties or exercising their powers under the Occupational Health and Safety Act [s.65 (1)]. We recommend broader “whistleblower protection” for anyone raising health and safety concerns in the workplace. An employer is prohibited from dismissing, discharging, threatening to discharge, suspending, laying off or otherwise penalizing, retaliating or discriminating against, an employee if the reason for this action is related in any way to the giving of information or evidence by the employee against the employer with respect to an alleged violation. New Brunswick and Saskatchewan have whistleblower protection in their labour standards legislation. We recommend similar protection for Ontario workers to ensure they are free to participate in creating safer and more healthful workplaces.

- ***Language Access Law***

We would also like to see language access improved for both the Ministry of Labour (MOL) and Workplace Safety and Insurance Board (WSIB). For genuine access by immigrants to the MOL and WSIB, both need to provide services and documentation in more languages. As it stands, employers are mandated to post a copy of OHS in English and the majority language of the workplace. WHMIS mandates that fact sheets about hazardous materials be provided in English. Both of these stipulations are inadequate for the general working population, and especially for the culturally diverse workers our union represents.



We recommend the adoption of language access laws (similar to those passed in various U.S. jurisdictions) to provide equal access and participation to public services, programs and activities for residents who are limited or non-English/French proficient. The ability to use and understand information is fundamental to daily life at work, at home, and in the community. In some instances, language barriers can threaten an individual's health and safety. Given the size of the immigrant population in Canada and its large and growing contribution to labour force growth, multi-language workplaces will become increasingly common in the coming years.

While we recognize there is a substantial cost associated with providing services and documentation in more languages, both agencies can begin by phasing in the top two languages according to census data in Ontario. Over time, we could have more languages phased in, over a reasonable timeline. The upfront cost of providing meaningful language access to limited English-proficient workers is invaluable in preventing workplace injuries and fatalities.

Language access policies are prevalent in metropolitan areas where there are many newcomers. For example, New York City has a city-wide language access policy which mandates all city services to be accessible in the top six languages in the city according to census data. Each city agency must submit a detailed report and designated employee which will oversee the implementation of the language access policy in the agency.

In order for confidentiality and language access to function and be used by those most vulnerable, MOL must guarantee a full implementation plan and enforcement. Both policies need to be fully in place and functional before immigrants who have been exploited and fear reprisal will utilize the health and safety system in place.