Confronting the Employment Standards Enforcement Gap in Ontario: Expanding Union’s Regulatory Function

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Outline

1. Principles and parameters of ES legislation and its enforcement: The ‘Enforcement Gap’

2. Alternative approaches to ES enforcement: Enhancing unions’ regulatory function

3. Conclusions: Employment law as a vehicle for collective action
ES Legislation and Its Enforcement

- Legislated standards intended to establish a floor for conditions of employment, protect against exploitation, and address power imbalances between workers and employers.

- In Canada, ES legislation is regulated provincially for most workers

- ES include minimum wages, maximum hours of work (daily, weekly), paid vacations, leaves, termination, severance, public holidays, and overtime hours and pay.

- There are three predominant methods of ES enforcement: proactive inspections, reactive complaints, and voluntary employer compliance.
The Enforcement Gap

Normative Goals:
Social minima, universality, fairness, etc.

Workplace Objectives:
Assure basic labour standards, protect against major downside risks of employment, mitigate against power imbalances and resulting abuses

Laws:
Employment standards (e.g., minimum wages, maximum hours, etc.)

Enforcement Strategies:
Voluntary compliance, proactive enforcement, reactive enforcement

Enforcement Tools:
Negotiated settlements, orders to pay, inspections, investigations, prosecutions, etc.

Abandonment → Eviction → Violation
### Alternative Approaches to ES Enforcement

#### Enhancing Unions’ Regulatory Function
- Reactive strategies (Anonymous, Third-party, and confidential complaints)
- Proactive strategies (Outreach activities between labour inspectorates and community groups and deputization Programs)
- Voluntary Strategies (Public procurement)

#### Employment Law as a Vehicle for Collective Action
- Union-supported campaigns driven by worker complaints of ES violations
- Labour-community coalition organizing to raise awareness of ES violations (naming and shaming) or to pressure for stronger enforcement strategies (fair wage campaigns/public procurement policies)
- Forming new institutions to assert workers’ rights
Expanding Unions’ Regulatory Function

- Unions could play a role in countering fundamental weaknesses in ES enforcement processes
- Unions may thus enhance their regulatory role in contemporary labour markets
- This could take the form of a “regulatory enforcement pyramid,” whereby enforcement activities proceed from lesser to greater levels of intervention
- Involvement in collective organizing around ES issues could contribute to a revitalized mandate for unions struggling to expand organizing efforts into the terrain of low-wage workplaces