LET'S ELIMINATE DISCRIMINATION AGAINST WOMEN IN EMPLOYMENT INSURANCE

A brief for the government and the federal political parties

Presented by a consortium of women's groups

March 2020

The following groups have endorsed this brief:

Association féminine d'éducation et d'action sociale (AFEAS)

Centre de documentation sur l'éducation des adultes et la condition féminine (CDÉACF)

Conseil d'intervention pour l'accès des femmes au travail (CIAFT)

Fédération des associations de familles monoparentales et recomposées du Québec
Fédération des femmes du Québec (FFQ)

Fédération des maisons d'hébergement pour femmes

Fédération du Québec pour le planning des naissances

L'Alliance des maisons d'hébergement de 2e étape pour femmes et enfants victimes de violence conjugale

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Réseau des Tables régionales de groupes de femmes du Québec

Réseau des lesbiennes du Québec

RLQ pour la visibilité sociale et politique des femmes de la diversité sexuelle

LET'S ELIMINATE DISCRIMINATION AGAINST WOMEN IN EMPLOYMENT INSURANCE

1. INTRODUCTION

Canadian Employment Insurance contains two main elements which unfairly limit women's access to unemployment benefits. Firstly, the use of hours worked as the criteria for determining both eligibility and the duration of benefits means that people working part time, of which women make up the majority, are less often eligible for benefits and receive lower benefits.

Secondly, the rule which limits benefits to a maximum of 50 weeks when special benefits and regular unemployment benefits are combined affects women almost exclusively. A woman who loses her job before, during or shortly after a maternity/parental leave is rarely eligible for unemployment benefits.

In this brief, we propose amendments to the Employment Insurance Act in order to eliminate these two elements of discrimination. We also propose other measures designed to make EI more accessible and to reinforce its role of insuring continuity of income when a worker is unemployed.

2. ELIGIBILITY CRITERIA BASED ON HOURS OF WORK DISCRIMINATES AGAINST PEOPLE WORKING PART TIME

In 2018, women made up 65% of people working part time. Among those aged 25 to 54, the core of the labour force, three-quarters of those working part time were women.[1]

For the same work effort, the same level of contributions and the same unemployment experience, women are less often eligible for benefits and receive lower amounts. In 2016, the adjusted regular-benefits-to-contribution ratio for women was 0.71, compared to 1.23 for men[2]. This means that for every dollar contributed, women received 71 cents and men $1.23.

This discrimination was created in 1996 when it was decided to use hours of work during the reference period as a criteria for determining both eligibility and the duration of benefits, rather than weeks of work, as was the case before. The purpose of the new criterion was to make it easier for people working long hours during a short season, mainly men, to qualify for benefits. In general, these people are more often eligible for benefits, for a longer period, than before the reform. However, they may have been hurt by the many other cuts adopted between 1989 and 1997.

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[1] Statistics Canada, Table 14-10-0018-01, Labour force characteristics by sex and detailed age group.

[2] Canada Employment Insurance Commission (CEIC), 2019, *Employment Insurance Monitoring and Assessment Report 2017/2018*, p. 45. The ratios are adjusted by the Commission so that the ratio for Canada as a whole and for the population as a whole is equal to 1.0. In other words, the ratio for both sexes together is 1.0.

Discrimination against part-time workers
An example in a region with an unemployment rate of 5.7 %
Requirement to qualify for benefits: 700 hours

CHANTAL, salesgirl in a small store	HENRY machine operator – textile factory
Hours worked: 5 days/week x 4 hours = 20 hours 50 weeks x 20 h. = 1 000 hours Wage : 15$/hour Average weekly earnings (AWE): $300	Hours worked: 5 days/week x 8 hours = 40 hours 25 weeks x 40 h. = 1 000 hours Wage : 15$/hour Average weekly earnings (AWE): $600
Amount of unemployment benefits (55% AWE): $165 x 18 weeks = $2,970	Amount of unemployment benefits (55% AWE): $330 x 18 weeks =$5,940
Benefits before 1990 (60 % of AWE): $180 x 45 weeks = $8,100	Benefits before 1990 (60 % of AWE): $360 x 33 weeks = $11,880

Conclusion : After the 1996 reform, **Chantal, who worked twice as many weeks as Henry, receives only half as much benefits.** Both accumulated 1 000 hours of insurable work, but it took Chantal 50 weeks and Henry only 25. The amount of benefits is proportional to earnings. Therefore, Chantal gets $165 per week and Henry $330.

In 1990 (and up until 1995), Chantal would have received benefits for more weeks than Henry because she worked more weeks. Nevertheless, the duration would not have been twice as long. As is the case now, benefits would have been proportional to average weekly earnings but the rate of replacement has decreased from 60% before 1990 to 57% in 1993 and to 55% since 1996.

In short, both Chantal and Henry lost a great deal with the 1990, 1993, 1994 and 1996 reforms, but Chantal lost 63% of her benefits and Henry 40% of benefits which were already higher.

With our proposals, Henry would receive 35 weeks of benefits and Chantal 43, the amounts being proportional to weekly earnings.

In 2017-2018, 94.5% of people who worked full time in a permanent job were eligible for regular EI benefits, compared to 86.7% of seasonal temporary workers, 69.3% of part-time workers in a permanent job and 66.8% of those working in a non-seasonal, temporary job[3].

For the same level of effort, people working part time receive fewer benefits than people who work more hours per week for three reasons:

- In order to acquire the number of hours necessary to qualify, a person working part time has to work more weeks, which was not the case before 1996;
- For the same number of weeks worked, the part-timer receives benefits for a shorter period, which was not the case before 1996;

[3] *Monitoring and Assessment Report 2017-2018*, p. 81. The Commission defines the rate of eligibility as the number of people who had accumulated a sufficient number of hours to qualify for unemployment benefits as a percentage of those who had contributed to EI and who had a valid reason for leaving employment. According to this definition, it's an insufficient number of hours which makes a claimant ineligible.

- Benefits received are proportional to average weekly earnings. Therefore, a person working 20 hours a week will get only half the amount received by another person earning the same hourly wage and working the same number of weeks but who works 40 hours a week[4].

Using hours as a criteria make many part-time workers ineligible

An example in a region with an unemployment rate of 5,7%

Requirement to qualify for benefits: 700 hours

CARMEN, waitress	**MARK,** truck driver
Hours worked : 24 hours/week x **25 weeks** = 600 hours Wage including tips : $15 an hour Average weekly earnings : $360	Hours worked: 40 hours/week x **25 weeks** = 1,000 hours Wage : 15 an hour Average weekly earnings : $600
Entitlement to unemployment benefits: **None**	Entitlement to unemployment benefits: $330 x 18 weeks = $5,940
Benefits before 1996 (57 % of weekly earnings): $205 x 16 weeks = $3,283	Benefits before 1996 (57 % of weekly earnings): $342 x 16 weeks = $5,472
Benefits before 1990 (60% of weekly earnings): $216 x 33 weeks = $7,128	Benefits before 1990 (60% of weekly earnings): $360 x 33 weeks = $11,880

Conclusion : After the 1996 reform, **Carmen,** who worked the same number of weeks as Mark, **lost all right to benefits**. **Mark receives $468 more now than prior to 1995** because he works more than 35 hours a week. But he didn't work any more weeks than Carmen.

Between 1994 and 1996, both Carmen and Mark would have received 16 weeks of benefits. Before 1990, both would have had a right to 33 weeks of benefits.

With our proposals, Carmen would qualify for the same 35 weeks of benefits as Mark because they both worked 25 weeks. Weekly benefits would be proportional to earnings. Carmen would receive 55% of $360 or $198 and Mark would get 55% of $600 or $330. If the rate of replacement is returned to 60%, Chantal would receive $216 per week and Mark $360.

Because the purpose of EI is to replace wages earned previously, the third explanation is justified, but the other two are not. In order to insure that, at the same unemployment rate, the same work effort results in the same level of eligibility for the same number of weeks, we propose:

[4] However, in the case of a person who worked 40 hours a week or more, benefits are more likely to be limited by the maximum insurable earnings ceiling and the rule which divides earnings by a factor varying between 14 and 22 according to the regional unemployment rate.

RECOMMENDATION 1: That a hybrid criteria for eligibility be created with two possibilities for qualifying: hours worked or weeks worked.

A week would be counted if the person worked at least 14 hours or earned at least 20% of the maximum weekly insurable earnings ($208.46 in 2020). Employers and employees would contribute for all hours worked and all hours would be counted for establishing eligibility so that people working in more than one job could qualify more easily[5].

3. ELIGIBILITY CRITERIA AND DURATION OF BENEFITS

In addition to the problem of discrimination against part-time workers, a significant number of amendments to unemployment insurance between 1989 and 1996 increased the requirements for accessing benefits and reduced the level and duration of benefits.

Currently, according to the Variable Entrance Requirement, the number of hours of work needed to qualify for benefits decreases from 700 to 420 as the regional rate of unemployment increases. We do not question the special needs of workers in regions where unemployment is endemic. Nevertheless, even in large cities and other regions where overall unemployment is low, people working in economic sectors where intermittent and part-time employment is the norm also need protection.

RECOMMENDATION 2: That, in all regions, the minimum requirement for benefits be either 420 hours or 12 weeks of work with a minimum of 14 hours of work per week (or earnings of 20% of maximum insurable weekly earnings).

RECOMMENDATION 3: That every eligible beneficiary get at least 35 weeks of benefits.

That, for each percentage point of unemployment above 6%, there be two additional weeks of benefits with a maximum of 51 weeks.

That people who worked more than 1,259 hours (or 35 weeks) be entitled to an additional week of benefits for each additional two weeks (70 hours) of work during the reference period.

The appendix table summarizes these parameters.

Recommendations 1, 2 and 3 would allow seasonal workers in resource-dominated regions, as well as many others, to be able to count on income over the full year. In 2017-2018, 5.8% of people who received regular benefits had a period without income and, in this group, 56% were non-seasonal workers. In fact, the number of beneficiaries affected by this phenomenon increased by 11.2% between 2016-2017 and 2017-2018[6], probably because the decrease in unemployment reduced the duration of benefits in most regions.

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[5] Before 1996, a week was counted if the person had worked at least 15 hours or earned at least 20% of maximum weekly insurable earnings. However, employers and employees did not have to contribute for weeks with fewer than 15 hours, which encouraged employers to create schedules with 14 or fewer hours in order to save money. Fourteen hours represents two 7-hour days or between 3 and 5 part days. This recommendation, therefore, represents a partial return to the criteria used before 1996, while insuring that all hours worked will be counted. Because benefits would still be established as a percentage of weekly earnings, this rule would not be unduly generous.

[6] *Monitoring and Assessment Report 2017-2018,* p. 101-103.

It should also be noted that 37.0% of non-seasonal beneficiaries exhausted their benefits before finding a new job, compared to 25.9% of seasonal workers. Women are also more likely to exhaust their benefits (35.3%) than men (32.7%)[7].

EMPLOYMENT INSURANCE AND LOW-WAGE WORKERS

In 2017, only 28% of the unemployed earning $15 an hour or less qualified for employment insurance, compared to 65% of those earning higher wages.

Women make up 59% of low-wage workers.

Among persons who had contributed to EI, only 45% of low-wage workers were eligible for benefits, compared to 79% of others. This, in spite of the fact that workers earning less than $30,000 a year contributed 1.8% of their employment income to EI while those with higher earnings contributed only 1.1%.

Among low-wage workers, 30% worked in retail trade and 22% in accommodation and food services. Employing mainly women, these two industries have a high proportion of part-time and short-term work. They are rarely unionized. Contrary to popular belief, only 15% of the employees in these sectors are students.

The working conditions in these industries are also so difficult that employees are more likely to quit their job "voluntarily", compared to other sectors.

Source: Ricardo Tranjan, *Towards an Inclusive Economy, Syncing EI to the Reality of Low-Wage Work,* Canadian Centre for Policy Alternatives, 2019.

4) REVOKE THE LIMIT OF 50 WEEKS OF BENEFITS WHEN SPECIAL BENEFITS AND REGULAR UNEMPLOYMENT BENEFITS ARE COMBINED

Section 12(6) of the Employment Insurance Act limits the number of weeks of benefits to 50 when a person receives both regular unemployment benefits and special benefits. This rule affects women almost exclusively because they receive the lion's share of special benefits, particularly maternity and parental benefits as well as benefits for caring for a family member. They also use sickness benefits somewhat more often than men[8].

To a certain extent, provincial Labour Standards Acts and the Canada Labour Code protect jobs during the leaves for which workers receive special benefits. Nevertheless, many employers ignore these laws and fire women who take maternity/parental leave or are absent in order to care for a sick child, a spouse, a parent or another person considered to be like a close relative. In addition, if the job is abolished during the leave, labour standards offer no protection.

Other women are already unemployed at the time when they begin their maternity leave. In this case, they are not allowed to receive all of the parental benefits to which they are entitled because the weeks for which they have already received unemployment benefits are deducted

[7] *Monitoring and Assessment Report 2017-2018,* p. 98-100.

[8] *Monitoring and Assessment Report 2017-2018*, p. 388-412.

from the 50-week maximum for maternity and parental benefits[9]. This rule can also limit access to benefits for sickness or caring for a family member or friend.

Women who are unemployed in the perinatal period really don't have a job. Like other unemployed workers, they must be available for work and must actively look for a job. They also need income during this period. The role of employment insurance in providing benefits because of family responsibilities should not be confused with its role in insuring income in the case of unemployment.

RECOMMENDATION 4: That section 12(6) of the Employment Insurance Act be abrogated; this section limits the number of weeks of benefits to fifty when a person receives both regular and special benefits. The right to each type of benefit should be independent.

If a person is unemployed after a period of special benefits, the reference period should include the 52 weeks prior to the period of special benefits, so that she or he will qualify on the basis of the same hours or weeks of work as were used to determine eligibility for special benefits.

That the benefit period be normally set at 104 weeks, but that it be extended without limit if necessary to permit a person to receive all regular and special benefits to which she or he is entitled.

In several European countries, notably Belgium, France, Germany, Ireland, Norway and the Netherlands, having received maternity benefits or benefits for the care of a child or another relative or friend does not disqualify a person for unemployment benefits. On the contrary, this kind of benefit is counted as employment income for the purpose of determining eligibility, the amount and the duration of unemployment benefits[10].

5) ABOLISH THE DISTINCTION BETWEEN MAJOR AND MINOR ATTACHMENT CLAIMANTS AND INCREASE THE DURATION OF SICKNESS BENEFITS

Currently, people who have worked fewer than 600 hours during their reference period are considered as minor attachment claimants. Even if they live in a region where the unemployment rate is above 8% and fewer than 600 hours are required to qualify for regular benefits, they are not eligible for special benefits.

[9] This is not the case in Quebec, however, where the Quebec Parental Insurance Plan (QPIP) allows a woman to receive all of the maternity and parental benefits to which she is entitled, even if she had previously received unemployment benefits. Nonetheless, QPIP benefits are counted in the 50-week limit if a Quebec woman applies for unemployment benefits after her parental leave.

[10] International Social Security Association (ISSA), *Social Security Programs Throughout the World: Europe, 2018*. SSA Publication No. 13-11801, September 2018, available at https://www.ssa.gov/policy. European Commission, MISSOC (Mutual Information System on Social Protection), table on protection in the case of unemployment, to date on July 1st, 2018, available at https://www.missoc.org.

RECOMMENDATION 5: That the distinction between major and minor attachment claimants be abolished. That the criterion for eligibility for special benefits be either 420 hours or 12 weeks with at least 14 hours of work per week (or 20% of maximum weekly insurable earnings) as for regular benefits.

It should be noted that with the criterion of having earned at least $208.46 per week, the claimant will have earned at least $2,502 during the 12 weeks of work required. This figure is close to the $2,000 required by the Quebec Parental Insurance Program.

According to a recent study, 16% of low-wage mothers do not qualify for maternity benefits compared to only 6% of mothers who earned more than $15 an hour[11].

Fifteen weeks of sickness benefits is often insufficient. In Quebec, the Labour Standards Act provides for 26 weeks of leave. We recommend that the duration of sickness benefits be increased to 35 weeks, in line with our recommendation 3 that all claimants receive at least 35 weeks of regular benefits.

RECOMMENDATION 6: That the duration of sickness benefits be increased to 35 weeks.

6. REINFORCE THE ROLE OF EMPLOYMENT INSURANCE TO INSURE CONTINUITY OF INCOME IN THE CASE OF UNEMPLOYMENT

In 1996, Unemployment Insurance became Employment Insurance. This change followed a series of cuts between 1989 and 1996 which greatly reduced access to benefits, as well as their amount and duration. We, therefore, recommend several measures to improve access to this income-replacement program and the level of benefits.

Unemployment insurance is a social insurance program and not an assistance program. Its purpose is to insure continuity of income in the case of an event which interrupts a person's capacity to earn wages for reasons specified by the law and mainly beyond his or her control. When eligibility rules are too strict or the level of benefits is too low to insure a decent income, many people, especially single mothers, have no choice other than to ask for welfare benefits. These constitute a poverty trap from which it is difficult to escape and which have a long-term detrimental effect, particularly for children.

RECOMMENDATION 7: That permanent disqualification in the case of a voluntary quit or firing for misconduct be abolished. The maximum penalty in these cases, as well as in the case of refusal of a job deemed to be suitable or not taking advantage of an opportunity for suitable employment, be limited to six weeks. That these penalties not be carried over to a subsequent period of benefits.

RECOMMENDATION 8: That average weekly insurable earnings used for establishing special or regular benefits be calculated on the basis of the twelve best weeks of earnings, independently of the regional unemployment rate.

This rule would be much fairer for workers whose jobs are intermittent, temporary or part-time.

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[11] Ricardo Tranjan, *Towards an Inclusive Economy, Syncing EI to the Reality of Low-Wage Work,* Canadian Centre for Policy Alternatives, 2019, p. 11.

RECOMMENDATION 9: **That, at a minimum, the rate of replacement of average weekly insurable earnings be reset at 60%, the rate used before 1990.**

RECOMMENDATION 10: **In the case of a labour dispute, that the work stoppage be considered to have ended at the time the collective agreement is signed, in replacement for the current rule which requires that 85% of workers normally employed to have been recalled to work.**

That eligibility for special benefits be maintained during a labour dispute.

That the reference and benefit periods of workers who have not been recalled be extended for a period equal to the duration of the dispute in order to make them eligible for unemployment benefits once the strike or lockout is ended.

RECOMMENDATION 11: **In the case where a claimant earns income during the benefit period, that two options be maintained, permitting the claimant to keep either 50 cents of benefits for every dollar earned up to a maximum of 90% of previous weekly earnings, or 40% of earnings with a minimum of $75. That Service Canada automatically apply the formula which is the most advantageous at the end of the benefit period.**

Weeks (hours) of work	Regional unemployment rate											
	< 6%	**6,1-7,0 %**	**7,1-8,0 %**	**8,1-9,0 %**	**9,1-10,0%**	**10,1-11,0%**	**11,1-12,0%**	**12,1-13,0%**	**13,1-14,0%**	**14,1-15,0%**	**15,1-16,0%**	**16,1% +**
12 (420 h)	35	37	39	41	43	45	47	49	51	51	51	51
13 (455 h)	35	37	39	41	43	45	47	49	51	51	51	51
14 (490 h)	35	37	39	41	43	45	47	49	51	51	51	51
15 (525 h)	35	37	39	41	43	45	47	49	51	51	51	51
16 (560 h)	35	37	39	41	43	45	47	49	51	51	51	51
17 (595 h)	35	37	39	41	43	45	47	49	51	51	51	51
18 (630 h)	35	37	39	41	43	45	47	49	51	51	51	51
19 (665 h)	35	37	39	41	43	45	47	49	51	51	51	51
20 (700 h)	35	37	39	41	43	45	47	49	51	51	51	51
21 (735 h)	35	37	39	41	43	45	47	49	51	51	51	51
22 (770 h)	35	37	39	41	43	45	47	49	51	51	51	51
23 (805 h)	35	37	39	41	43	45	47	49	51	51	51	51
24 (840 h)	35	37	39	41	43	45	47	49	51	51	51	51
25 (875 h)	35	37	39	41	43	45	47	49	51	51	51	51
26 (910 h)	35	37	39	41	43	45	47	49	51	51	51	51
27 (945 h)	35	37	39	41	43	45	47	49	51	51	51	51
28 (980 h)	35	37	39	41	43	45	47	49	51	51	51	51
29 (1015 h)	35	37	39	41	43	45	47	49	51	51	51	51
30 (1050 h)	35	37	39	41	43	45	47	49	51	51	51	51
31 (1085 h)	35	37	39	41	43	45	47	49	51	51	51	51
32 (1120 h)	35	37	39	41	43	45	47	49	51	51	51	51
33 (1155 h)	35	37	39	41	43	45	47	49	51	51	51	51
34 (1190 h)	35	37	39	41	43	45	47	49	51	51	51	51
35 (1225 h)	35	37	39	41	43	45	47	49	51	51	51	51
36 (1260 h)	36	38	40	42	44	46	48	50	51	51	51	51
37 (1295 h)	36	38	40	42	44	46	48	50	51	51	51	51
38 (1330 h)	37	39	41	43	45	47	49	51	51	51	51	51
39 (1365 h)	37	39	41	43	45	47	49	51	51	51	51	51
40 (1400 h)	38	40	42	44	46	48	50	51	51	51	51	51
41 (1435 h)	38	40	42	44	46	48	50	51	51	51	51	51
42 (1470 h)	39	41	43	45	47	49	51	51	51	51	51	51
43 (1505 h)	39	41	43	45	47	49	51	51	51	51	51	51
44 (1540 h)	40	42	44	46	48	50	51	51	51	51	51	51
45 (1575 h)	40	42	44	46	48	50	51	51	51	51	51	51
46 (1610 h)	41	43	45	47	49	51	51	51	51	51	51	51
47 (1645 h)	41	43	45	47	49	51	51	51	51	51	51	51
48 (1680 h)	42	44	46	48	50	51	51	51	51	51	51	51
49 (1715 h)	42	44	46	48	50	51	51	51	51	51	51	51
50 (1750 h)	43	45	47	49	51	51	51	51	51	51	51	51
51 (1785 h)	43	45	47	49	51	51	51	51	51	51	51	51
52 (1820 h)	44	46	48	50	51	51	51	51	51	51	51	51
Current maximum	**36**	**38**	**40**	**42**	**44**	**45**	**45**	**45**	**45**	**45**	**45**	**45**