

# WHAT THE NEW EI RULES MEAN







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The Mowat Centre is an independent public policy research centre located at the School of Public Policy & Governance at the University of Toronto.

The Mowat Centre is Ontario's non-partisan, evidence-based voice on public policy. It undertakes collaborative applied policy research, proposes innovative research-driven recommendations, and engages in public dialogue on Canada's most important national issues.

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## What the New El Rules Mean

In November 2011, the Mowat Centre Employment Insurance Task Force proposed the creation of a redesigned federal support system for the unemployed that would:

- be there when workers need it;
- contribute to a dynamic and productive labour force; and
- treat workers and employers equitably.

The Mowat Centre EI Task Force concluded with the release of its final recommendations in November 2011. The Mowat Centre continues to serve as a source of information and hub of multi-sectoral dialogue on EI reform.

The federal government has recently introduced a series of EI reforms through Budget 2012, Bill C-38, and new proposed regulations. These reforms are currently at varying states of finality. Some have been passed in legislation, while others are proposed regulations.

On June 20, 2012, the Mowat Centre held a public forum to discuss the recent round of EI changes. The Mowat Centre has similarly engaged in dialogue on the recent changes with senior representatives of business, labour, civil society, and municipal and provincial governments.

The purpose of this document is to outline the changes recently made to EI and reflect on their meaning. The document begins with a broad assessment of the current state of the EI system before proceeding to an individual discussion of the changes.

Our conclusion is that the package of reforms does very little to address the structural problems within the system. Despite the fact that the reforms have raised concerns in Atlantic Canada, rural Canada, and seasonal industries, the reforms are likely to have a disproportionately negative impact on young, urban, and immigrant workers and businesses in Ontario and the Western provinces. Although there are some positive features in this package of changes, another round of reforms is clearly needed.

## THE STATE OF THE EI SYSTEM

The final recommendations of the Mowat Centre EI Task Force identified numerous problems with the federal EI system and made specific recommendations for its reform (2011). In its 2012 budget, the federal government has introduced a number

of changes to the EI system, all without changing the system's fundamental characteristics or addressing the program's core challenges. Briefly, the core challenges are:

## El will remain a highly differentiated system in which the strength of the safety net for unemployed workers varies dramatically by region.

Canadians' access to unemployment benefits will continue to be heavily conditioned by where they live. Region of residence will continue to determine the length of time at work needed to qualify for benefits, the length of time for which an unemployed worker can collect benefits, as well as the size of weekly EI benefits.

The EI system uses a narrow measurement of an applicant's employment prospects—the local unemployment rate—to determine whether a worker is eligible for benefits, how much she will be given, and for how long. As a result, laid off workers in different regions with equivalent work histories can be entitled to vastly different benefits—or have no access to benefits at all. Canada is the only country in the world that uses region of residence in this manner to determine the strength of the social safety net for unemployed workers.

The system will continue to play vastly different roles in different parts of the country.

EI will continue to be Canada's safety net against unexpected unemployment, while also serving simultaneously as a program of ongoing wage subsidization for some regionally concentrated clusters of firms and workers.

## El will continue to serve as a regressively-funded system of wage subsidization serving some but not all workers and firms.

EI premiums are regressive. Workers with lower wages and businesses with lower revenues pay more into the system relative to their incomes. EI's role in wage subsidization for some firms and workers will continue to be paid for disproportionately by those lower income workers who do not generally use EI and those smaller firms that rarely lay off workers.

## Large numbers of temporarily unemployed Canadians will continue to be left without federal support.

The EI system now only provides support to roughly 40 per cent of unemployed Canadians. That figure is much higher in rural regions and much lower in urban regions. Workers left out of the system often have non-standard employment (e.g. part-time workers, multiple job-holders, self-employed) or no recent labour market attachment.

## The system will become even more complex and opaque.

Under the current system, it is nearly impossible for unemployed Canadians to understand the support offered to them by EI and why that support might differ

from the entitlements of other unemployed workers. The nature of the changes being introduced will make a complex system even more so.

The public debate on the reforms thus far has been misleading. On the one hand, Atlantic Canadian premiers and their supporters have publicly defended the untenable status quo and depicted proposed changes as an assault on their region and on seasonal workers (Curry and Taber, 2012). On the other hand, the federal government has moved forward with tepid changes that will do very little to encourage a more efficient labour market; the changes also weaken the social safety net, in particular for young, urban, and immigrant workers, as well as for long-tenured workers.

The rest of this *Mowat Policy Brief* provides a summary and analysis of these changes and how they might impact Canadians.

### SUITABLE EMPLOYMENT AND EXPERIENCE RATING

## Federal Changes—Suitable Employment

New regulations will more explicitly define "suitable employment," that is, what types of jobs EI recipients are expected to seek and accept.

Previously, suitable employment was not explicitly defined in legislation and regulations. Rather, the definition of suitable employment developed over the years through the process of adjudicating EI appeals. Through this process, suitable employment came to be defined as a job that pays a comparable wage in an EI claimant's "usual occupation."

Changes have been made to this definition of suitable employment through new regulations. Under the new regulations:

- EI recipients will be expected to take all available hours of work, including at times that fall outside of previous working hours.
- EI recipients will be expected to accept work within a one hour commute. Expected commute times could be higher in cities.
- No EI recipient will be required to take a position that is vacant due to a labour dispute (this is a current practice).
- However, "a person receiving EI will not have to accept work if:
  - they have a health problem that prevents them from taking a particular job;
  - they have family obligations that prevent them from working at certain times of the day;
  - they have limited transportation options in terms of commuting to and from work; or
  - they are not physically capable of performing the work." (HRSDC, 2012)

The changes to suitable employment noted above will affect all EI claimants equally from the first day of their claim. Another set of changes, discussed below, will affect EI claimants differently through the course of their claim and differently based on their past use of the EI system.

## Federal Changes—Introducing a Form of Experience Rating

Previously, the definition of suitable employment was the same for all EI claimants. It was also the same for the entire duration of EI claims. Under the new system, the meaning of suitable employment will change over the life of a claim. The new system will also inject an element of "experience rating," meaning that the definition of suitable employment will differ depending on an individual's past use of the EI system.

Two criteria of suitable employment will change based on how long individuals have been collecting EI and their past use of the EI system: "type of work (responsibilities, tasks, qualifications, experience) and wages." The new regulations split EI recipients into three groups based on their past use of EI: frequent claimants, occasional claimants, and long-tenured workers (HRSDC, 2012).

Frequent claimants are defined as individuals who "had three or more regular and/or fishing claims and received over 60 weeks of regular and/or fishing benefits in the past five years." They will immediately be required to look for "similar" jobs to the one they previously performed that pay a minimum of 80 per cent of their past wage. After seven weeks of benefits they will be required to accept any work they are qualified to perform so long as it pays a minimum of 70 per cent of their past wage.

Occasional EI claimants are all EI claimants who do not fall into the frequent or long-tenured category. They will have six weeks to look for employment in their "usual occupation," at 90 per cent of their past income or more. After six weeks they will have to shift their job search to "similar" positions at a level of 80 per cent of their past wage. After 18 weeks, job search will have to expand to any work they are qualified to perform that pays a minimum of 70 per cent of past wages.

Long-tenured workers are defined as "claimants who have paid into the EI system for the past seven of ten years and over the last five years have received 35 or fewer weeks of EI regular/fishing benefits." They will have the first 18 weeks of their claim to search for work in their "usual occupation," at a minimum of 90 per cent of their past wage, following which they will be required to look for a "similar" job that pays a minimum of 80 per cent of the past wage.

Note that first time claimants are captured under the category "occasional claimants," unless they meet the qualifications to be considered a long-tenured worker. Also note that the term "similar employment" used in the new regulations is not yet defined.

## **Analysis and Projected Impact**

Defining "suitable employment" makes sense and the proposed definition is a reasonable one.

The new suitable employment regulations will add substantial complexity to Canada's system of support for the unemployed. This added complexity does not address the EI system's structural flaws. Additionally, while this added complexity could moderately enhance the functioning of the labour market, there are several other potential outcomes.

Most notably, job searches could be shortened, especially in complex urban labour markets, leading to poorer employer-employee matches and a less valuable EI system for both workers and businesses. While much public discussion of changes to suitable employment has focused on rural seasonal labour markets, these changes implicate all EI recipients and, in fact, urban areas may be most affected.

Additionally, administration of the EI system could become very difficult, with uneven enforcement and disqualifications across Canada.

The new regulations distinguish between different types of EI claimants in some ways, but the extent of these differences is small. The new regulations put all recipients in a similar boat in other ways. For example, after 18 weeks of a claim, occasional claimants (a group which can include first time claimants) will be subject to the same requirements as frequent claimants.

Additionally, all claimants will have to seek "all available hours of work, including at times that fall outside of previous working hours" and will be subject to specific commute time expectations noted above. This was previously not the case.

The publically articulated government rationale for the new regulations has focused on frequent claimants. New treatment of first time claimants has not been publicly rationalized. Long-tenured workers will also face more stringent suitable employment rules than in the past, though they will never be treated in exactly the same fashion as frequent and occasional claimants.

How aggressively the new regulations are enforced will be a crucial determinant of their outcomes. The regulations could lead to significant change or virtually no change at all, depending on the character of enforcement.

The new approach to suitable employment will not be regionally differentiated in a formal sense, but, due to a very uneven distribution of frequent claimants, the expectation is that some provinces will be more affected than others.

In 2009-10, nationally, 48 per cent of claimants were first time, 27 per cent were occasional, and 25 per cent were frequent. Table 1 presents data for frequent claimants by province.

**TABLE 1: Percentage of Claims from Frequent Claimants:**National and Provincial (2009-10)

National and Frovincial (2005 10)					
PROVINCE	% NATIONAL FREQUENT CLAIMANTS	% OF TOTAL PROVINCIAL CLAIMANTS THAT ARE FREQUENT			
All	10.70/	(1/0)			
NL	10.7%	61.6%			
PE	2.7%	58.3%			
NS	7.3%	42.5%			
NB	8.6%	48.3%			
QC	37.8%	34.7%			
ON	19.0%	14.4%			
MB	2.3%	18.4%			
SK	1.9%	20.3%			
AB	2.5%	6.7%			
BC	7.0%	14.2%			

Source: (HRSDC, 2010, Annex 2.6)

Uneven distribution of frequent claimants is quite dramatic, as noted in Table 1. While one might assume that regions with the largest numbers of frequent claimants will be most affected, this may not be the case. Arthur Sweetman of McMaster University has pointed out that the regional distribution of impact from these changes may be different than one would expect:

The regions that will be most heavily affected are likely to be those that combine a substantial percentage of repeat users of EI and a sizable number of job openings relevant for such workers. Therefore, it seems reasonable to expect that regions in the "middle" of the frequent use/unemployment rate spectrum (these two tend to move together) are likely to be most strongly affected by the policy change. (Sweetman, 2012)

Sweetman notes that the most affected type of claimant would be a frequent claimant in a low unemployment region. There are jobs available where such individuals live and they would be compelled to take them. However, there are few frequent claimants in low unemployment regions.

By contrast, a frequent claimant in a high unemployment region cannot be compelled to take non-existing jobs. Recall that the new policy changes do not attempt to encourage mobility out of a claimant's region. Additionally, recall that first time claimants who do not qualify as long tenured will be treated in the same fashion as frequent claimants after 18 weeks of a claim. If first time claimants live in areas with more available jobs, they will be affected more by the regulations after 18 weeks of a claim.

As a result, most affected regions, at least in the short term, are likely to be those in the middle of the unemployment rate and frequent claimant spectrum. The new approach to suitable employment may have greater influence in Ontario than in the Atlantic region, for example. This may run contrary to expectations given the coordinated critical reaction to the changes from Atlantic premiers. Atlantic premiers' criticism of these reforms as an attack on seasonal workers does not seem consistent with the actual predicted effects of the proposed regulations.

Some have raised concerns that the new suitable employment regulations could exert overall downward pressure on wages. From their first day of unemployment, all EI claimants (roughly 40 per cent of the unemployed) will be required to accept work offered at a salary below what they previously earned (10-30 per cent less). Others, however, have argued that the new regulations will make the labour market more efficient and give EI recipients the right incentives to return to work quickly.

It is clear, however, that the new suitable employment regulations inject an added element of complexity into a highly complex system that is already difficult for workers and businesses to understand.

## **REASONABLE JOB SEARCH**

### **Federal Changes**

Currently, EI recipients are required to submit reports on their job search activities every two weeks. They are expected to be available for work in Canada and willing

to take a job every day of a claim. New regulations make job search requirements much more specific. The following activities are required:

- researching and assessing job prospects;
- preparing for job application (preparing resume);
- searching for job vacancies;
- applying for positions;
- attending interviews; and
- other efforts to improve employability (workshops, employment agencies, job fairs, networking, etc.).

Recipients will be required to look for work every day of a claim. This was not stated as explicitly under past rules.

Also, under the new rules:

The frequency of... job search and the diversity of the search should be consistent with the opportunities available. For example, in a city or community with few job openings or opportunities, the job search should focus on identifying opportunities (i.e., researching and searching) and not applying to the same job or business every day. In comparison, a job search in an area with numerous job opportunities should focus on both identifying and applying for available positions. (HRSDC, 2012)

## **Analysis and Projected Impact**

As with the new clarity on the definition of "suitable employment," the new definition of "reasonable job search" is also useful.

These more specific requirements could, in theory, require more enforcement. In the new regulations, the federal government has sent some signals that it will move from a proactive (every-two-week submission) to an audit based approach to enforcing reasonable job search requirements: "Canadians receiving EI benefits would be required to keep a record of their job search activities and submit, when requested, evidence supporting all job search activities undertaken."

An audit based approach could mitigate the need for more intensive casemanagement that emerges from more detailed requirements. However, it could also lead to uneven enforcement.

## **CHANGES TO THE BENEFIT CALCULATION METHOD**

## Federal Changes

The "best 14 weeks" pilot project will conclude in April 2013. This pilot project currently offers a more generous weekly benefit calculation method in mostly high unemployment, mostly rural, and mostly Eastern EI regions. While canceling this pilot project, the federal government will remodel the standard, national weekly benefit calculation method, taking some cues from the best 14 weeks pilot project (Government of Canada, 2012, p. 148).

The new weekly benefit calculation method extends the benefit calculation period from 26 to 52 weeks (as did the best 14 weeks pilot project). This will be particularly beneficial to EI recipients who had unstable week-to-week earnings in the year preceding job loss. This is because the highest earning weeks for the purpose of benefit calculation will be selected from a wider range of total weeks. It will also benefit moderate and lower unemployment regions currently outside the best 14 weeks pilot project.

But there will still be significant regional differentiation. Benefits will be based on the highest earning 14-22 weeks within the past year, depending on the regional unemployment rate. The higher the regional unemployment rate, the larger the weekly EI benefits are likely to be for EI claimants who had variable week-to-week earnings prior to job loss.

## **Analysis and Projected Impact**

Benefit generosity will be reduced for some claimants in current best 14 weeks pilot project regions and increased for many claimants in the rest of the country, partially reflecting a recommendation of the Mowat Centre EI Task Force to nationally standardize the benefit calculation method (Medow, 2011; Mowat Centre Employment Insurance Task Force, 2011). This could be seen as contributing to increased national equity in the EI system. Projected at \$387 million over two years, this is the most expensive EI change in Budget 2012.

The new approach could mitigate disincentives to accept available work for partial year workers, as HRSDC has shown the best 14 weeks pilot project has done in regions where it has been implemented. One potential concern, however, is that this reform will make it easier for employers in a wider range of regions and industries to use the EI system to support a contingent or partial year workforce.

## **CHANGES TO "WORKING WHILE ON CLAIM"**

## **Federal Changes**

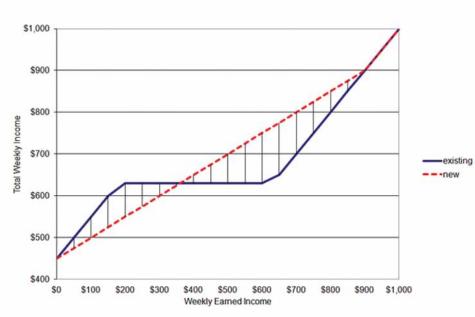
Budget 2012 announced that the national "working while on claim" pilot project will be redesigned and reintroduced (Government of Canada, 2012 p. 147-148). This pilot project, applied in the entire country, allows workers to keep some earned income while collecting EI benefits. The current approach employs a 100 per cent clawback on all earnings above the greater of \$75, or 40 per cent of an individual's weekly EI benefit. The new approach features a simple 50 per cent clawback on all earnings while on claim.

This change will allow some claimants to keep more of what they earn, making it more advantageous for them to accept additional employment. Some EI recipients working while on claim will see a larger clawback of earned income and reduction in total income (Mendelson, 2012).

The current system employs a shifting clawback. Under the new "steady clawback," the effect of earnings on EI benefits will be the same from the first dollar.

## FIGURE 1: New Versus Existing "Working While on Claim" Provisions in Employment Insurance:

Total Weekly Gross Income with a \$450 El Benefit



### Source: (Mendelson, 2012)

## **Analysis and Projected Impact**

Whether those working while on claim will see an increase or decrease in total income depends on the ratio of their earned income to their weekly EI benefit.

EI beneficiaries with earned incomes that are around half the size of their weekly EI benefits (or smaller) will generally see a decrease in total income. This is because they will experience a 50 per cent clawback on income that was previously exempt from any clawback. EI beneficiaries with earned incomes that are greater than roughly half the size of their weekly EI benefits will generally experience an increase in total income, because they will experience only a 50 per cent claw back on income that was previously subject to a 100 per cent clawback.

The new system could improve incentives to accept offers of larger amounts of work and reduce incentives to accept smaller amounts of work. The projected cost for this change is \$74 million over two years, meaning a higher total distribution of benefits is the expected result.

## **APPEALS PROCESS**

## Federal Changes

A new "Social Security Tribunal" will be established (Bill C-38, Division 6). This body will hear appeals from EI, CPP, and OAS. Currently, EI appeals are handled by the EI Board of Referees and EI Umpires. The Board of Referees is a national network of 1,000 part-time members. Appeals are heard by three-member panels

with one government-appointed representative, a representative of business, and a representative of labour. The new system will involve a small team of civil servants hearing all appeals. The current standard practice of workers going to an in-person hearing will likely not be possible under the new approach.

The new approach will involve a two-step "leave to appeal" process in which appeals will have to make it though a first round of evaluation for chance of success before being considered in full. Currently, appeals go directly to full consideration.

## **Analysis and Projected Impact**

The federal government has argued that these changes will make the system more efficient and nationally consistent and less prone to local, idiosyncratic decisions. On the other hand, concerns have been raised that the new system will make it more difficult for appellants to make their case, and that the influence of employers and employees on the EI system will be weakened. Centralization of the appeals process will also require written and/or online work for appellants, making the system potentially more difficult to navigate for those with lower levels of literacy.

### **EI PREMIUMS**

## **Federal Changes**

The EI premium rate will increase by five cents each year until the EI account achieves balance. Afterward, the federal government plans to utilize a seven year break even rate (Government of Canada, 2012 p. 148). Budget 2012 projects that balance will be achieved in 2016. The role of the Canada Employment Insurance Financing Board (CEIFB) in rate setting is to be maintained, though its structure and operations will be reviewed to ensure "cost effectiveness." EI premiums will continue to be placed in a separate account designed to prevent government use of EI funds for non-EI purposes, as was begun in 2008.

## **Analysis and Projected Impact**

Since Budget 2012 has effectively set the EI premium rate until the EI account achieves balance, it is unclear what the role of the CEIFB will be in the near-term. The CEIFB will also be precluded from recommending premium increases above five cents (the current maximum allowable increase is 15 cents). If balance is achieved by 2016, this approach could facilitate the countercyclical impact of EI, which would be a positive macro-economic development.

## **NEW JOB ALERTS FOR EI RECIPIENTS**

### **Federal Changes**

The federal government has announced a new informational job alert system that will provide EI recipients with more information about available jobs (HRSDC, 2012). EI recipients currently receive information about available jobs every two weeks. The new system will provide information twice daily. It will include job postings that the government culls from private sources. The current system only contains jobs from the federal job board.

## **Analysis and Projected Impact**

Having a single source for job postings should improve the efficiency of the labour market by removing informational barriers between employers and job seekers. Aggregating job postings from multiple sources is a positive step toward the idea of a "universal job board." If this is successful, making the new aggregated source of job postings more widely available to all workers would be positive.

## THE EI-TEMPORARY FOREIGN WORKER PROGRAM "LINK"

## **Federal Changes**

The federal government has announced plans to develop an EI-Temporary Foreign Worker (TFW) Program link (HRSDC, 2012). This link will provide employers seeking TFWs with information about the presence of EI recipients in their region. It will also provide this information about available jobs—for which employers want to hire TFWs—to EI recipients.

## **Analysis and Projected Impact**

This initiative appears to be purely informational, providing EI recipients with job postings and businesses with information about available workers before those businesses can hire TFWs. There is no indication that any incentives or disincentives will be used to encourage matches between EI recipients and firms seeking TFWs.

In its announcement of the EI-TFW link, HRSDC published data, by province, for the top five occupations in which TFWs occupy positions that match the occupational background of current EI recipients (e.g. the number of EI recipients in a province who were truck drivers versus the number of TFWs in the province who drive trucks).

TABLE 2: Top 5 Occupations by Province (Aggregated) in which TFWs Work in Former Occupational Field of El Claimants:

TFW and El Claim Numbers and TFW to El Claims Ratio

PROVINCE	EI CLAIMS	TFWs	RATIO: TFWs TO EI CLAIMS
NL	3222	79	0.02
PE	1427	81	0.06
NS	2625	111	0.04
NB	6674	264	0.04
QC	4023	339	0.08
ON	3376	3129	0.93
MB	578	118	0.20
SK	1647	583	0.35
AB	1449	2704	1.87
ВС	8895	3102	0.35

Source: (HRSDC, 2012)

A larger proportion of TFWs are working in past occupations of EI claimants in Alberta and Ontario than in other provinces. Assuming perfect intra-provincial mobility—which does not exist and which the new policy does not purport to encourage—the greatest scope for moving EI recipients into TFW-occupied positions appears to be in Alberta and Ontario, with very little room for diverting EI claimants into such TFW-occupied positions in the Atlantic region.<sup>1</sup>

## **CONCLUSION**

The fundamental characteristics of the EI system are unchanged by the recent round of changes. The need for foundational reform of Canada's support system for the unemployed remains. Although there are some positive features to the recent federal effort, another round of change is needed in order to address the system's well-known shortcomings.

Some of the recent changes could have a significant impact, but the effects will depend on the nature of enforcement. These impacts may be quite different than one would expect given the rhetoric of some of the opponents of these changes. For example, the new definitions of suitable employment and the obligations on EI recipients to accept available employment will likely be felt more in urban areas than in rural seasonal economies.

The impact will also depend on how these new rules are interpreted by the public service. The appeals process has been fundamentally overhauled. The impact of this overhaul in practice remains to be seen.

Canadians' ability to assess the impact of the changes has been weakened by reductions in data collection and sharing. Changes to the way Statistics Canada reports on EI (discontinuation of monthly releases) and broader changes to public statistical systems, in particular the cancellation of the long form census and discontinuation of the Survey of Income and Labour Dynamics, make an assessment of these changes over time more difficult.

Overall, the package of reforms has angered many in Atlantic Canada, rural Canada and seasonal industries, while doing very little to address the structural problems within the system that disproportionately affect young, urban, and immigrant workers, and businesses in Ontario and the Western provinces. Another round of reforms is clearly needed.

<sup>1.</sup> Concurrent reforms to the TFW program will allow businesses to pay skilled-TFWs up to 15 per cent below regional prevailing wages in their occupation and low-skilled-TFWs up to five percent below regional prevailing wages in their occupation, but, only if non-TFW employees (Canadians and Permanent Residents) at the same firm receive an equivalent wage for equivalent work. In public discussions of this reform, the change has often been described as an across the board cut of TFW wages. This is not the case. Wages for Canadian and Permanent Resident employees for equivalent work, within each firm that employs TFWs, remains the legal pay floor. Enforcement, however, is another matter. This reform will likely have no impact on efforts to move EI recipients into jobs that would have been occupied by TFWs.

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