



CUPE ADVISORY

Changes to Employment Insurance

October 18, 2012

CUPE Research

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1 Brief History of (Un)Employment Insurance

Employment insurance started in 1940 in Canada (then called Unemployment Insurance) and was modeled after the British unemployment system. The insurance system was introduced because of the growing understanding that unemployment was a “natural” process in advanced capitalist economies and therefore not the fault of the individual worker. Modern social, political and economic sciences concluded that, since there was always going to be an unemployment rate above zero, the government should act to mitigate the negative social and economic impacts on workers who lost their jobs through no fault of their own.

Growing public pressure on government led to the establishment of a worker and employer funded public insurance program that would pay an income to those that had become unemployed. The system would also operate to help those unemployed find work in their field. A program that made sure that there was a close match between an individual’s skills and their work increased productivity in the economy and limited hardship on the unemployed worker.

Since the system was funded by workers, appeals panels included worker representatives.

For decades after its introduction, unions fought for an expansion of EI to cover other instances of unemployment that were no fault of the worker or benefited society such as maternity/paternity, parental, compassionate and sick leave. EI was also expanded to cover sectors that had regular cycles of employment and unemployment such as fishing and farming.

The first government attacks on the unemployment insurance system began in the 1970s and 1980s with the roll-back of government social welfare programs. These attacks culminated in the 1990s with a drastic reduction in the number of unemployed workers covered by the program through regressive changes to EI qualifications. These attacks continue to today as large businesses and conservative governments try to increase emphasis on the individual’s responsibility to find work and reduce the collective responsibility to those who lose their jobs through no fault of their own.

Today, fewer than 40 per cent of unemployed workers qualify for EI even though they are unemployed through no fault of their own.

As a result of the Conservative government’s 2012 omnibus budget (Bill C-38), it has become even harder to qualify for Employment Insurance. Further, the process of appealing the decision has been changed to eliminate worker and employer seats on the appeals panels.

1.1 Application Process

Applications to the EI system are the responsibility of the unemployed worker. The EI system operates like any insurance system where certain criteria are established to qualify for different levels of benefit depending on work history and past claim experience. This initial application requires filling-out and submitting a form. However, since changes to the system in the 1990s, the rejection rate for this first step has increased dramatically and the appeals process was used to deal with a high rate of falsely rejected claims.

Before the changes outlined by the 2012 Budget bill, the EI system had developed over decades, was relatively informal, but was designed to give people a sense of fairness and justice and incorporated local realities into decision making processes.

2 Changes to Employment Insurance in 2012 Budget (Bill C-38)

The Conservative government's omnibus budget (Bill C-38) changed much of the way the Employment System will run. Overall, the changes will alter labour market pressures in favour of employers offering low wage jobs.¹

The changes affect all those who are regular Employment Insurance claimants, including those receiving fishing benefits. Those unaffected include those receiving special benefits including maternity, parental, compassionate and sick leave.

2.1 Changes to the Definition of "Suitable Employment"

The changes will affect what criteria establish what jobs an EI claimant will have to accept. These include:

- Strict provisions on what personal circumstances will be considered legitimate reasons not to accept a job.
- A broader range of work conditions for acceptable new jobs will be imposed.
- Hours of work regulations will change to force claimants into jobs that exist outside "normal" hours of work.
- Acceptable commuting time will be increased to one hour (or more in urban areas).

The type of work that will be deemed suitable and what reduction in wages applicants must accept for new jobs is lowered (See table 1 below). This means that the longer you are without work and the more frequently that you are forced into the Employment Insurance system the lower the wage your next job will be. Under the new provisions, almost half of EI claimants could reach the point of being forced to accept a job with a wage of 70 per cent of your previous job and in a position that is only somewhat matching your skills.

Table 1: Changes to the Employment Insurance system. These changes affect the type of work that claimants are required to seek out and wage reductions that are now acceptable.

Long-tenured workers: not claimed in seven of the previous ten years and have collected 35 weeks or less EI.

Frequent claimants: three or more claims over five years totaling 60 weeks.

Occasional claimants: everyone else.

LONG-TENURED WORKERS		
Length of Time on EI	% of Previous Wage	Type of Work
0-6 Weeks	90	Same
7-18 Weeks	90	Same
19+ Weeks	80	Similar

OCCASIONAL CLAIMANTS		
Length of Time on EI	% of Previous Wage	Type of Work
0-6 Weeks	90	Same
7-18 Weeks	80	Similar
19+ Weeks	70	Any

FREQUENT CLAIMANTS		
Length of Time on EI	% of Previous Wage	Type of Work
0-6 Weeks	80	Similar
7-18 Weeks	70	Any
19+ Weeks	70	Any

2.2 Appeals Process

The appeals process handles denied claims and fixes administrative errors in deciding EI eligibility. The local nature of the original appeals tribunal system was considered important in weighing local employment and economic realities which determine the likelihood of finding new employment and thus the eligibility for receiving EI. This was especially important when dealing with seasonal workers applying for EI. Even the employer group Canadian Federation of Independent Businesses (CFIB) has stated that the original structure of the program is efficient.ⁱⁱ

In the previous system, it could take up to six months to get a hearing.ⁱⁱⁱ However, experts have said that with the restrictions in the new system, people will have to rely on the welfare system as their claims will be handled slower with fewer resources.

It is also likely that under the new system, applicants may have to hire lawyers because of the more technical and legal aspects of the new system.^{iv}

2.2.1 Changes to the Appeals Process

The government has stated that it is expected to save \$25 million a year through the planned cuts in the number of people dealing with appeals as well as all but eliminating the local character of the appeals process.

There will now be only 38 members assigned to the EI portfolio out of up to 70 full-time members on the entire board (others will deal with Canadian Pension Plan and Old Age Security appeals).

The appeals system will now only have a single chair with three vice-chairs, but just one of these will be assigned to the Employment Insurance system.

Instead of a tribunal, the applications and appeals will be heard by only one, government appointed member. The members are appointed by government without consultation with labour or the employer community.

There is now a limitation for appeals of 30 days and there is a move from in-person appeals to “electronic administration and enforcement” programs, legislation, activities and policies. This means a worker making the appeal may never meet the persons judging the appeal.

2.2.2 Current Appeals Backlog

In 2010, there were 27,000 appeals for employment insurance plus 4,500 appeals for the Canada Pension Plan and Old Age Security, which the appeals boards also dealt with.

The previous system had 1,000 part-time members on these various tribunals, 900 of which dealt with employment insurance. Part-timers sat on the boards 2-3 times a week. However, even with the number of people in part-time positions, there was still a back-log of 80,000 employment insurance claims in Quebec alone.^v

2.3 Working While on Claim (Pilot Project)

The Conservative government has brought in a new version of the “Working While on Claim” pilot project for EI recipients. This pilot has been promoted as a way to reduce the penalty for those EI claimants that engage in part-time work while looking for full-time employment. Originally, EI benefits were clawed back at a high rate so that any employment income gained would mean an almost equal reduction in EI benefits.

The previous “Working While on Claim” pilot project started December 7, 2008, in response to increased unemployment resulting from the global recession and ended in August, 2012. The new pilot project, which started August 5, 2012, adjusts the amount of money that is clawed-back if a worker finds part-time employment while collecting Employment Insurance benefits.

Currently, nearly 55 per cent of EI claimants find part-time work and benefit from this pilot program.

2.3.1 Problems

When the new pilot project was brought in, the Conservative government claimed that everyone would gain from working while receiving EI benefits when compared to the old system. However, new reports indicate that the new pilot project penalizes some of those that find part-time work while on claim compared to the original pilot.

Liberal MP Wayne Easter commissioned a report from the Library of Parliament research branch,^{vi} which highlighted examples where those who are in part-time employment while on EI will receive significantly less of their working wage under the new EI claw-back regulations.

According to the report, “under the old pilot project, claimants could only earn up to \$75 or 40 per cent of their weekly benefit, whichever was greater. Any earnings above that threshold were deducted from the benefit payment dollar-for-dollar.” However, under the new pilot, “which started on August 5, 2012, deductions from EI benefits become equal to: 50% of gross earnings while on claim, if these earnings are below 90% of weekly insurable earnings; or 45% of weekly insurable earnings plus 100% of gross earnings while on claim above the threshold of 90% of weekly insurable earnings.”

In response to mounting pressure from EI claimants and small businesses, the Conservative government has added a caveat to the new pilot project. The new changes allow claimants that were netting more money on the previous Working While on Claim pilot to opt-out of the new pilot project starting in January. These claimants that opt-out will be reimbursed the money that was clawed back between August and January starting in January. However, this option to opt-out will not apply to all those that started to claim EI after the new pilot came into effect (Aug 5).

This provides some relief to those that were on the old system and saw a decrease in net income under the new pilot. However, it is not clear when they will see this relief.

2.4 Best Weeks Calculation

Under the new regulations outlined in the 2012 budget, the definition of a “high unemployment” region has changed from those above eight per cent unemployment to regions with above 13 per cent unemployment.

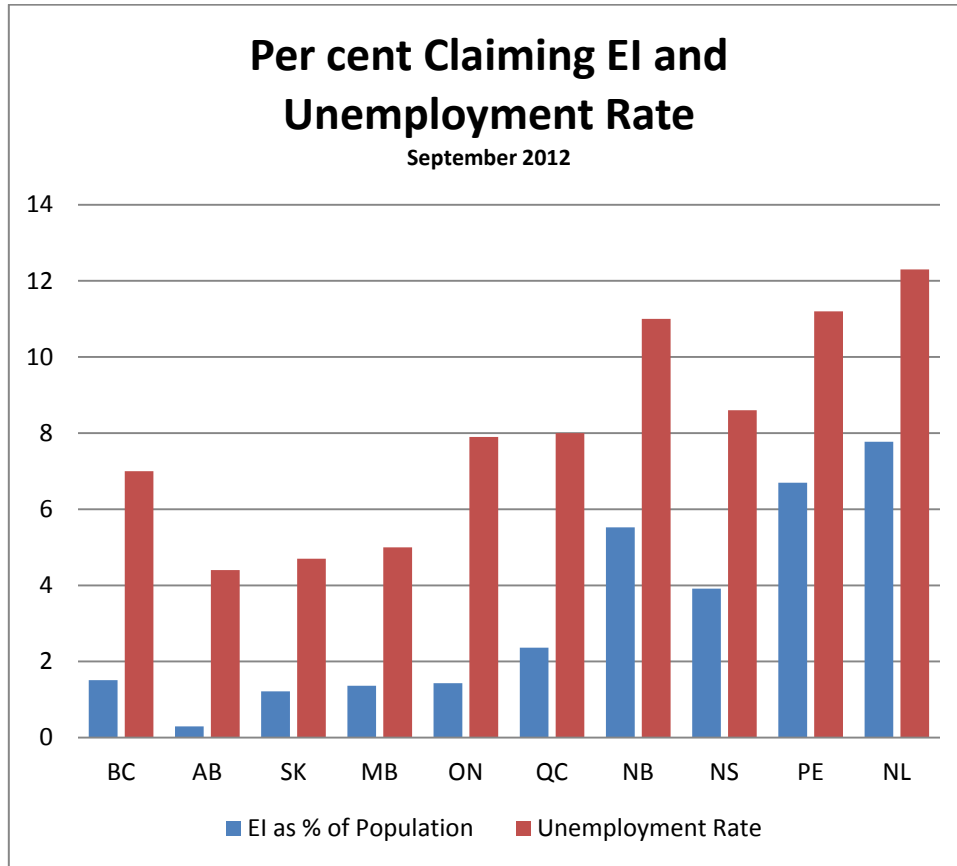
The change of classification of a high unemployment region affects the “best weeks” calculation for workers applying for EI in areas between eight and 13 per cent unemployment. The best weeks calculation for regions designated with “high unemployment” is 14 weeks. Those areas not designated with “high unemployment” are based on earnings over a 20 or more week period.

The change disadvantages those in precarious work that take lower-wage employment during these precarious work periods since these lower wages will now count in the EI benefit calculation.

This standard will be adopted after April 6, 2013.

2.5 Employment Insurance Recipients by Province

Current statistics show that the Atlantic region has a much higher percentage of the population that are EI claimants. The reasons for the higher percentage of EI claimants is a result of the local characteristic of the economy and the high proportion of workers in seasonal employment. This means that any changes to the EI system will disproportionately affect these economies more.



- ⁱ Gill McGowan, Alberta Federation of Labour
<http://www.journalofcommerce.com/article/id50456/--industry-uncertain-about-impact-of-ei-reform>
- ⁱⁱ Canadian Federation of Independent Business—Newfoundland and Labrador
www.cbc.ca/.../pol-employment-insurance-review-boards.html
- ⁱⁱⁱ Neil Cohen, Executive Director, Winnipeg Community Enemployed Help Centre
- ^{iv} Lucie Lamarche, University of Ottawa Law,
http://www.huffingtonpost.ca/2012/05/25/ei-reivew-board-scrapped_n_1545421.html
- ^v Guy Caron, Finance Committee Hearings,
<http://openparliament.ca/committees/finance/41-1/70/guy-caron-6/only/>
- ^{vi} Case study report prepared by the Library of Parliament
<http://wayne-easter.liberal.ca/parliamentary-work/case-studies-for-the-new-pilot-project-working-while-on-claim/>

October 18, 2012
wl/cope 491
Updated: December 14, 2012