

EC5.13 Attachment 3

ATTACHMENT 3: OPTIONS AND ISSUES IDENTIFIED IN CONSULTATIONS FOR REDUCING PRECARIOUS WORK AMONG BUILDING MAINTENANCE EMPLOYEES AND CONTRACTORS

Across Canada, precarious employment – characterized by uncertainty, insecurity and a lack of control of how work is performed, has been growing more rapidly than all other forms of employment since the 1980s (PEPSO 2015). Precarious work is gendered, racialized, tied to precarious immigration status (Precarity Penalty) and has a negative impact on mental and physical health (PEPSO 2015).

In the Greater Toronto and Hamilton area, 40 per cent of workers were in some degree of precarious employment in 2015 (PEPSO 2015). While precarious work is not necessarily tied to poverty, low income precarious employment is growing faster than non-low income precarious employment (Institute for Competitiveness and Prosperity 2014), including in the building services sector, which employs 32,400 people and has a median wage of \$17.32 per hour (Labour Market Information Report, Statistics Canada).

Cost competition among service providers and a claims-based system for enforcing work standards are drivers of precarious work. Employer practices that pose the greatest challenge include misclassification of employees as independent contractors, multiple subcontracting relationships and contract flipping preventing labour unionization and accrual of employee benefits.

The following potential options were proposed by stakeholders for IMIT recipients to meet the Requirement in relation to addressing precarious work, which the City may consider for future program reviews:

- IMIT recipients agree to limit subcontracting in building services supply chain to 1 (or direct hiring) and disclose a list of contractors on an annual basis
- IMIT recipients agree to being held responsible for any violations of employment standards (including misclassification) or non-compliance arising from the engagement of any sub-contractors
- IMIT recipients agree to pay unionized wage rates to building services employees and contractors
- IMIT recipients adopt wage and payment standards in their custodial contracts and conduct audits of the custodial services on an annual basis. IMIT recipients agree to ensure successor rights, continuity of wages, and right to unionize when a contract is flipped.

The table below summarizes the underlying issues identified in consultations with policy experts, legal professionals and academics specializing in precarious work, including issues specifically impacting building maintenance workers in many situations.

#	Issue	Description
1	Independent contracting (misclassification of employees)	<p>Distinguishing between employees and independent contractors is crucial, since the self-employed are, for the most part, treated as entrepreneurs who do not require the statutory protections accorded to employees under labour and employment legislation. In the case of building maintenance services, this can manifest in piece-rate contracts that amount to an hourly wage lower than minimum wage, insufficient provision of training and materials, and no employee benefits.</p> <p>The Province of Ontario provides a resource for distinguishing self-employed from employed individuals.</p> <p>The Government of Canada (through the Canada Revenue Agency) draws the following distinctions for employment status for tax purposes</p>
2	Subcontracting (fissuring)	<p>Firms outsource non-essential and sometimes essential services to subcontractors. Secondary businesses doing that work sometimes shifts those activities to still other businesses. Subcontracting in the supply chain often means low wages at the bottom of the chain. Benefits accruing to "procure and redistribute" companies.</p>
3	Use of temporary-agency workers (perma-temps)	<p>Companies may rely on temporary agency workers for a substantial portion of their workforce, or over an extended period of time. Some use this strategy as a way of mitigating the WSIB risks for dangerous work.</p> <p>Temporary agency employees typically receive less training and less compensation than non-agency employees who are doing the same work.</p>
4	Piece-work contracts/ Fee-for-service arrangements	<p>Piece-work models often undercut hourly wage (e.g. pay for painting of an entire room/building amounts to low hourly compensation). Job parameters may change without corresponding changes in remuneration. Additional hours or touch-ups can be unpaid. Intensified workload negatively impacts the worker but also the health and safety of the public if the quality of service declines.</p>

#	Issue	Description
5	Wages – Wage rate, Cash Payments, Wage theft	The building maintenance sector is too often characterized by minimum or low-wage work, at times vulnerable to wage theft or informal (cash) payment.
6	Scheduling	Overnight work, lack of advance notice of schedules, irregular schedules or last minute shift changes may pose challenge to workers juggling multiple jobs to earn a living. Part time work is pervasive and requires multiple job holding and involves no workplace benefits. Significant impacts on families where both parents are precariously employed is common in industries like cleaning.
7	Provision of sufficient materials/tools	Companies at times provide insufficient materials (e.g. 1 glove, 1 cloth) for cleaning jobs, which can be a health hazard to cleaners and facility users.
8	Supply safety training	Training may not be provided to misclassified "self-employed" workers, or temporary agency employees.
9	Contract-flipping	Contract-flipping is at times used as a strategy to de-unionize workers. "New" companies winning bids may retain employees but strip back any accrued worker benefits to maintain low costs.
10	Enforcement occurs only through worker-initiated claims (proactive workplace inspections have been suspended by the Ministry of Labour).	The Ministry of Labour claims process is considered by some stakeholders to be a weak enforcement mechanism due to the vulnerable nature of workers making complaints, the length of time it takes for a claim to be investigated, and the low likelihood of receiving any compensation that is owed. Due to of the risky nature of claims-making, few employees submit claims against their current employer; only 9 per cent of employment standards claims come from workers who are still in the job that the complaint is about (Vosko, Noack & Tucker, 2016).

#	Issue	Description
11	Some hiring is racialized and gendered, and associated with precarious immigration status (e.g. undocumented workers)	Workers with precarious immigration status or limited documentation are more likely to hold precarious jobs. Undocumented workers may be more vulnerable to illegal employment practices, since they have little recourse through the claims system, and can be negatively impacted by "good labour practices" requiring formal record-keeping.