



A Consultation Paper
On Work through
Temporary Help Agencies

Ministry of Labour

May 2008



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AN OPEN LETTER TO THE PEOPLE OF ONTARIO

May 21, 2008

The McGuinty Government is committed to ensuring that employees working through temporary help agencies are properly protected under the law. We have heard about a number of issues regarding temporary help agency employment from both employee and employer stakeholders, as well as the general public.

The issues that have been brought to our attention raise concerns that certain practices of some temporary agencies may be negatively impacting Ontario workers employed in this sector. We would like to learn more about these issues so that we can determine if changes may be needed to serve employees, temporary help agencies and the client businesses of agencies. That is why I have asked my Parliamentary Assistant, Mr. Vic Dhillon, to begin this consultation with you today.

We want to ensure that Ontario's employment legislation reflects the realities of today's workplace and labour market in a balanced way.

This is an opportunity for you to help shape the future of Ontario. Your views are important to us and I hope you will participate in this consultation process. The consultation paper outlines how to submit your comments by fax, mail or e-mail.

I look forward to hearing from you on these important issues for Ontario's temporary help agency sector.

Sincerely,

Brad Duguid
Minister

A Consultation Paper on Work through Temporary Help Agencies

INTRODUCTION

The Ministry of Labour has become aware that certain practices of some temporary agencies may be negatively impacting Ontario workers employed in this sector. Examples of these practices include charging fees to workers in exchange for a promise or offer of employment and putting barriers in place that prevent workers employed by temporary agencies from gaining permanent employment with client companies.

Temporary employees and the agencies that employ them are an important part of today's workforce in Ontario. Over 700,000 people in the province have temporary jobs. Much of this employment is through temporary help agencies. There are about 1,000 agencies currently operating in Ontario.

It has been some time since the *Employment Standards Act* was reviewed with a focus on temporary work. Based on evidence collected by our Ministry and concerns raised by individuals, as well as employer and employee advocates, we believe it is time to review the legislation to determine whether it reflects the current nature of the temporary help industry and offers fair protections for its employees.

We are asking for your input on a number of issues, and for any other comments and suggestions you might have. This is your chance to help ensure that Ontario's employment law recognizes the needs of temporary workers, and the agencies that employ them, in a fair and balanced way.

BACKGROUND

Temporary employees are an important part of today's workforce in Ontario. Over 700,000 people in the province have temporary jobs. Much of this employment is through temporary help agencies. There are about 1,000 agencies currently operating in Ontario. They provide their workers to client businesses that want staff on a non-permanent basis.

It appears that work through temporary help agencies has changed greatly over the past decade or so:

- In the 1970s and 1980s, employment through temporary help agencies was mostly in short-term, clerical jobs that lasted a few days or weeks. Temporary help agency workers were called in when regular staff members were away sick or on vacation.
- Today, agencies supply workers in a wide range of occupations to industries such as manufacturing, construction, service, and information technologies.
- An employee of an agency might be assigned to a single client business for several months, or even years.
- In many cases, agency employees work side-by-side with the staff of an agency's client business, doing the same type of work.

This situation has raised questions about whether temporary help agency workers are being treated fairly, compared to permanent or "regular" employees.

CURRENT RULES REGARDING TEMPORARY WORK

Employment Standards Act, 2000

General

The *Employment Standards Act, 2000* (ESA) sets minimum standards for hours of work, wages, vacations, public holidays, leaves of absence from work, notice of termination and severance pay. Temporary employees, including those working through agencies, generally have the same ESA rights as other employees. Minimum periods of employment are needed only for entitlement to a vacation, pregnancy and parental leave, notice of termination and severance pay. Under the ESA, a temporary help agency is generally considered to be the employer of persons it sends to client businesses.

Special Rules

There are, however, some special rules for certain employees. For example, those who “may elect to work or not [to work] when requested to do so” are partly exempt from public holiday entitlements:

- Employees are generally entitled to take a public holiday off work and receive public holiday pay for that day.
- An elect-to-work employee is not entitled to take a public holiday off. If an elect-to-work employee works on a holiday, he or she is entitled to at least one and one-half times the regular rate of pay for all hours worked, whereas employees not subject to the partial exemption receive either:
 - One and one-half times the regular rate of pay for all hours worked, plus public holiday pay for the day; or,
 - Their regular rate of pay for all hours worked, plus a substitute day off with public holiday pay.

An elect-to-work employee is also exempt from the notice of termination and severance pay requirements of the ESA.

A temporary help agency employee is “elect to work” if he or she can choose to accept or refuse an agency assignment without any negative consequences. However, once the assignment is accepted, the employee must report to work as directed by the client business.

For example, a temporary help agency employee may be offered an assignment to a client business whose place of work is far away from the employee’s home. The employee may refuse such an assignment. The employee may next be offered an assignment to another client business with place of work closer to the employee’s home and the employee may choose to take it.

- As long as the temporary help agency does not impose any negative consequences on the employee for refusing the first assignment, he or she would be subject to the special rules for an “elect to work” employee.
- This is true even if, once the second assignment is taken, the client business requires (as a condition of its contract with the agency) that the agency employee report to his or her job every day without fail.

SEEKING A BALANCE: A POLICY REVIEW OF WORK THROUGH TEMPORARY HELP AGENCIES

While workers already have a significant amount of protection under Ontario's employment legislation, it is important for the government to know whether any gaps remain.

This paper deals with issues that have been brought to the Ministry of Labour's attention by individuals and groups interested in the well-being of persons working through temporary help agencies, as well as through employment standards inspections and investigations. They are related to the ESA and other areas not currently covered by employment legislation.

We are seeking your comments, suggestions and input on these matters. They relate to:

- A. ESA "Elect to work" Exemptions;
- B. Barriers to Permanent Employment;
- C. Fees Charged to Workers by Agencies;
- D. Liability for ESA Violations; and,
- E. Information to Agency Employees about Assignments.

If you have comments on other issues related to work through temporary help agencies, we would be interested in hearing them as well.

A. ESA “ELECT TO WORK” EXEMPTIONS

As mentioned above, employees who “may elect to work or not [to work] when requested to do so” are partly exempt from public holiday entitlements and completely exempt from notice of termination and severance pay requirements.

For example, a temporary help home care provider may allow a personal support worker to choose which assignments or “visits” to patient homes he or she would like to take. The home care worker would be an “elect to work” employee if he or she can choose to refuse any visit without any negative consequences.

It appears that many temporary help agencies consider all of their employees to be elect-to-work, even though this may not be true under the ESA. Whether employees are truly elect-to-work can only be determined on a case-by-case basis, depending on the circumstances of the work.

What we want to know:

- 1) Should the exemptions be maintained?
- 2) Are there any situations where the elect-to-work exemptions make sense because of differences in the way work is done by an elect-to-work employee and a “regular” employee?
- 3) What would be the impact of revoking the exemptions on employees, temporary help agencies and client businesses of agencies?

B. BARRIERS TO PERMANENT EMPLOYMENT

Some stakeholders have raised a concern that temporary agency employees face barriers to permanent employment. Examples given include:

- Significant “temporary to permanent” fees charged to client businesses of agencies or employees of agencies;
- Contract rules that prevent agency employees being hired by client businesses; and,
- Prohibitions on client businesses providing reference letters for agency employees.

What we want to know:

- 1) Should an agency be able to charge a fee to a client business or agency employee if the client wants to hire an agency employee on permanently?
 - If so, should there be a limit on how much such a fee could be?
 - If so, should there be a limit on how long an agency can charge such a fee? (For example, the fee cannot be charged after the employee has worked for the client for 12 months or more.)
- 2) Should an agency be able to state in its contract with a client business that the client cannot hire its employees on permanently?
 - If so, should there be a limit to how long such a restriction could apply? (For example, the clause could not apply after the employee has worked for the client for 12 months or more.)
- 3) Should an agency be able to state in its contract with an employee that the employee cannot take a permanent job with its client business(es)?
 - If so, should there be a limit to how long such a restriction could apply? (For example, the restriction could not apply for more than 12 months after the employee first started working for a client through the agency.)
 - If so, should the restriction be limited to a client business (or businesses) where the employee was assigned by the agency, and not extend to other clients of the agency?
- 4) Should an agency be able to prohibit a client business from giving an agency employee a reference?

C. FEES CHARGED TO WORKERS BY AGENCIES

A temporary help agency may ask a person to pay a fee for helping him or her find a temporary assignment. Agencies may also charge fees for other services, such as classes on résumé writing or preparing for interviews.

What we want to know:

- 1) Should a temporary help agency be able to charge a worker an upfront “registration” fee before trying to find him or her an assignment with a client business?
- 2) Should a temporary help agency be able to charge a one-time “placement” fee when a worker is first assigned to a client business?
- 3) Are there other services, e.g., résumé writing assistance, job interview preparation, that a temporary help agency should be able to charge for? Should an agency be able to make such services mandatory?
- 4) What would be the impact on workers, temporary help agencies and client businesses of agencies if some or all of these types of fees were prohibited or restricted?

D. LIABILITY FOR *EMPLOYMENT STANDARDS ACT, 2000* VIOLATIONS

Under Ontario's employment standards legislation, a temporary help agency is generally considered to be the employer of a person it sends to work for a client business. The client business is not the employer. The agency, not the client business, is responsible for making sure that a worker's employment standards rights are met.

For example, a concern has been expressed that an agency will sometimes close its business before an employee is paid, or otherwise unfairly refuse to pay an employee for work that has already been done for its client. If an agency does not pay, the client generally has no legal responsibility to do so, even if it benefited from the work the employee performed.

What we want to know:

- 1) Should both temporary help agencies and their client businesses be liable for violations of the *Employment Standards Act, 2000*, such as unpaid wages?
- 2) What would be the impact of joint liability on employees, temporary help agencies and client businesses of agencies?
- 3) Are there standards of the *Employment Standards Act, 2000* that client businesses should not be liable for, such as parental leave?

E. INFORMATION TO AGENCY EMPLOYEES ABOUT ASSIGNMENTS

There are currently no rules about how much information temporary help agencies must give their employees when they are sent to client businesses on assignments.

What we want to know:

- 1) Should temporary help agencies be required to provide employees the following types of written information about an assignment:
 - The client business's name, address and phone number;
 - What wages and benefits will be received;
 - Pay schedules; and,
 - Hours of work?
- 2) Are there any other types of information that should be provided by an agency to its employees at the start of assignments?

How to Respond to this Consultation Paper

If you are interested in responding to this paper with your comments, ideas and suggestions, please contact the Ontario Ministry of Labour by:

Fax: (416) 314-5855; Attention: Temporary Help Agency Employees Project

Mail: Temporary Help Agency Employees Project, 400 University Avenue, 12th floor, Toronto, Ontario, M7A 1T7

E-mail: tempagencyempl@ontario.ca

Please provide your response by July 7, 2008.

Your input will help us address issues related to temporary help agency employment in a balanced, fair and responsible way. Thank you for taking the time to participate.