

Complying with Employment Standards:

WHAT TEMPORARY HELP AGENCIES AND CLIENT BUSINESSES NEED TO KNOW



The *Employment Standards Amendment Act (Temporary Help Agencies)*, 2009 came into force on November 6, 2009 and affects how businesses in the temporary help sector operate.

Why change the law?

These amendments to the Employment Standards Act, 2000 (ESA) respond to the realities of Ontario's labour market. Ontario's temporary workforce often performs "temporary jobs" for extensive periods in environments where permanent workers do similar work. The changes will promote fairness and sustainable employment for temporary help agency employees. We want to be sure that temporary help agencies and their client businesses understand their new obligations under the law.

What are the changes and when did they take effect?

Amendments affecting elect-to-work employees and public holidays came into effect on January 2, 2009. The rest came into force on November 6, 2009. Temporary help agencies and their business clients now have new obligations under the ESA. These are described in more detail below.

Who is who? Terms in the new law

"Assignment employee" means an employee employed by a temporary help agency for the purpose of being assigned to perform work on a temporary basis for clients of the agency.

"Client", in relation to a temporary help agency, means a business that enters into an arrangement with the agency under which the agency agrees to assign or attempt to assign one or more of its assignment employees to perform work for the business on a temporary basis.

"Temporary help agency" means an employer that employs persons for the purpose of assigning them to perform work on a temporary basis for clients of the employer.

Permanent Hiring

A temporary help agency can no longer restrict a client from permanently hiring one of its assignment employees. “Temporary-to-Permanent” fees may be charged to the client business only during the first six month period, beginning when the temporary help employee starts their initial placement with the client. Note: These same rules apply when a client wishes to enter into any type of direct employment relationship with an assignment employee, including one that is temporary, full-time or part-time.

Other Fees

Temporary help agencies can no longer charge the assignment employees certain fees, including a fee to become an assignment employee.

Job References for Temporary Employees

A temporary help agency can’t restrict a client from providing an assignment employee with a reference. The assigning temporary agency must allow this.

Information to Agency Employees

Temporary help agencies must now provide assignment employees with certain kinds of information related to the assignment. This includes the client business’ contact information, the wage rate and benefits, a general description of the work, the pay period and pay day. Agencies must also provide an [Information Sheet](#), published by the Director of Employment Standards, which outlines the assignment employee’s ESA rights. See our [publications page](#) for more information.

Reprisals

Temporary help agencies and client businesses may not penalize assignment employees for asserting their rights under the ESA.

Public Holidays

Assignment employees who are elect-to-work employees are generally entitled to public holidays and public holiday pay. This entitlement starts as soon as employment with the temporary agency begins. The amount of public holiday pay to which an employee is entitled is all of the *regular wages earned* plus the vacation pay payable, in the four work weeks before the work week with the public holiday, *divided by 20*. Visit the [Public Holidays page](#) on the website, where more information and an on-line [public holiday pay calculator](#) are available.

Termination

Effective November 6, 2009, most elect-to-work employees, including most assignment employees who are employed under an elect to work arrangement, have a right to notice of termination or pay in lieu of notice. The temporary help agency, as the employer, has the obligation to provide notice or pay in lieu when terminating the employment of any assignment employee who has been employed for at least three months. Generally, the notice required when an individual employee's employment is terminated ranges from one week (for those employees whose period of employment is less than a year) to eight weeks (for those whose period of employment is eight years or more). The period of employment is based on the length of the employee's relationship with the agency, not the duration of any particular assignment.

Special rules for this sector specify that temporary help agency assignment employees are entitled to mass notice of termination ranging from eight weeks to 16 weeks when 50 or more assignment employees are terminated by an agency in the same four-week period as a result of assignments ending at a single client's establishment, not at the establishment of the agency itself. For more information see the [Temporary Help Agencies chapter](#) of the ES Guide.

Severance

Effective November 6, 2009, most elect-to-work employees, including most assignment employees who are employed under an elect-to-work arrangement, have a right to severance pay if their employment is severed and they have been employed for at least five years. (The five years is based on the total time spent in employment with the agency, not the duration of any particular assignment.) The temporary help agency, as the employer of its assignment employees, will have this obligation if its payroll is \$2.5 million or more or if it severs the employment of 50 or more employees in a six-month period because of a permanent discontinuance of all or part of its business. The severance pay entitlement is equal to one week's pay for each year of employment to a maximum of 26 weeks' pay. For more information see the [Severance Pay chapter](#) of the ES Guide.

Who must comply with this law?

Whether a temporary help agency assigns temporary employees to clients – or a business uses temporary staff hired through an agency – employers and agency clients must be aware of these legislative changes and must follow them. It's the law. For further information on compliance, see [Complying With Employment Standards: What Businesses Need to Know](#).

How does one comply?

The Ministry of Labour will also have a host of tools and resources to help you comply with the law. **More detailed information is available online, in the [ES Guide](#).**

Agencies and client businesses in the temporary help sector are encouraged to learn more by visiting our [website](#) for detailed information.

FOR MORE INFORMATION VISIT

www.ontario.ca/employmentstandards

**or call the Employment Standards
Information Centre at 416-326-7160,
1-800-531-5551 (toll free), or 1-866-567-8893
for Hearing Impaired TTY.**

**Employment Rights and Safety
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See also

www.ontario.ca/SafeAtWorkOntario

**Occupational Health and Safety
416-326-3835 (Greater Toronto Area)
1-800-268-8013 (Toll free province-wide)**

ISBN 978-1-4435-1008-0 (Print)

ISBN 978-1-4435-1009-7 (HTML)

ISBN 978-1-4435-1010-3 (PDF – Print)

ISBN 978-1-4435-1011-0 (PDF – View)

January 2010