

Temporary Help Agencies

FAQs

Please note that these FAQs are provided for your information and convenience only. The Employment Standards Amendment Act (Temporary Help Agencies), 2009 came into force on November 6, 2009. This is not a legal document. For complete information, refer to the Employment Standards Act, 2000 and its regulations.

General

Why has the government made changes to the Employment Standards Act?

The nature of work in the temporary help sector has changed. More than 600,000 people in Ontario have temporary jobs, many through temporary help agencies which provide their workers to client businesses that want staff on a non-permanent basis. There are about 1,000 agencies currently operating in Ontario.

The changes to the act will help ensure that Ontario's employment standards reflect the current realities of the workplace and that temporary help agency workers are being treated fairly.

What is a temporary help agency?

Temporary help agencies provide employees to client businesses that require staff on temporary assignments. This could be for short-term jobs that last for a few days or weeks, or long-term assignments that can last for several months or years.

Initially, these agencies provided mostly clerical workers, but today, they supply workers in a wide range of occupations, including manufacturing, construction, service, and information technologies.

Do these changes cover job placement agencies, "head hunters" or executive search firms?

The changes to the Employment Standards Act, 2000 do not affect employment agencies making one-time permanent placements with clients which hire the workers directly. These employment agencies or "head hunters" are not the employers of the people they are placing.

Do the changes affect assignment employees who are assigned to provide professional services, personal support services or homemaking services?

Generally, yes. However, if an assignment employee provides professional, personal support or homemaking services as defined in the *Long-Term Care Act, 1994* and the assignment is made under a contract between the individual or the individual's employer and a community care access corporation within the meaning of the *Community Care Access Corporations Act, 2001*, these changes do not apply.

Do the changes affect people who work for agencies in administrative and other direct functions?

The new requirements only cover assignment employees working for agencies. They do not cover in-house administrative staff who work for the agency and are not sent out on assignments with clients.

Will there be stepped-up enforcement targeting temporary help agencies?

Employment Standards Officers will investigate all claims alleging contraventions of the new provisions and will ensure that workplaces comply with them. We will also consider these changes when planning our proactive inspection strategy.

How do these changes spell out the ability of an employee to get paid the wages they are owed?

If an assignment employee of a temporary help agency does not get paid his or her wages, he or she can file a claim.

If the claim is valid, an order to pay to the agency may be issued, and the ministry will then attempt to collect the unpaid wages.

If the ministry is unsuccessful in its attempts to collect on the order for unpaid wages, but obtains information about a client that may owe monies to the agency, the ministry may require that client to pay the monies to the Director of Employment Standards in trust for the employee, instead of to the agency. This applies only if the client owes the agency money.

Assignment Employees

I am a temporary help agency employee working on an assignment. Who is my employer?

The temporary help agency is your employer.

Although the client business for whom you are working is not your employer, the client has certain responsibilities. If you ask about your employment standards rights or ask that you be given your rights, the client cannot punish you in any way, including by ending your assignment. (You also continue to have the right not to be punished by your agency for asking about or asserting your ESA rights.)

How do these changes remove barriers to my obtaining permanent employment if I am offered a job by a client business where I am working on assignment?

An agency cannot prevent a client from hiring you to be its own employee if the client wants to do so. If the agency places you on an assignment with a client, it can charge the client a fee for hiring you, but only during the six-month period beginning on the day you first started working for the client. As well, the agency cannot prevent the client from giving you a letter of reference if you ask for one.

If a client of an agency wants to hire you to be its employee, an agency cannot tell you that you cannot take the job. An agency cannot charge you a fee if a client wants to hire you.

Do these changes remove barriers to my obtaining employment with the client business where I am working if the client business offers me a job that is temporary (for example, contract, seasonal or casual work)?

The following rules apply with respect to any kind of direct employment the client business offers you. It may be temporary or any other kind of employment relationship.

An agency cannot prevent a client from hiring you to be its own employee if the client wants to do so. If the agency places you on an assignment with a client, it can charge the client a fee for hiring you, but only during the six-month period beginning on the day you first start working for the client. As well, the agency cannot prevent the client from giving you a letter of reference if you ask for one.

If a client of an agency wants to hire you to be its employee, an agency cannot tell you that you cannot take the job. An agency cannot charge you a fee if a client wants to hire you.

Can a temporary help agency charge me any fees?

Agencies are prohibited from charging certain fees to their assignment employees. They cannot charge you a fee connected with:

- becoming an assignment employee
- assigning work for you or attempting to find an assignment for you
- assistance in preparing a resume or preparing for job interviews
- taking a job with a client of the agency.

What specific information must an agency give me?

Agencies are required to provide you, in writing, with the agency's legal name (and operating or business name if that is different than the legal name) and contact information. They are also to provide you with an information sheet prepared by the ministry outlining your employment standards rights.

When the agency offers you an assignment with one of its clients, it must give you the following information:

- the client's legal name (and operating or business name if that is different than the legal name) and contact information
- the wage rate and benefits
- the hours of work
- a general description of the work
- the estimated term of the assignment (if known) and,
- the pay period and pay day.

If the agency gives you this information, but does not provide it in writing when the offer is made, it must be provided in writing as soon as possible.

Will I now be paid for public holidays?

As a temporary help agency assignment employee, you have the same rights to public holidays as other employees in Ontario.

Ontario has nine public holidays. Generally, if you are on an assignment and the public holiday falls on a day when you would ordinarily be working, you have a right to take the public holiday off work and to be paid public holiday pay for that day. Public holiday pay is calculated according to a formula:

Your regular wages earned + vacation pay payable in the four weeks before the week in which the holiday falls (regardless of the number of assignments you may have been on within that four week period) / 20.

If you agree (in writing) to work on the holiday, you have the right to:

- public holiday pay plus premium pay (at least one and one-half times your regular rate of pay); or
- your regular rate of pay plus a substitute day off with public holiday pay.

If a public holiday falls on a day when you are on an assignment but would not ordinarily be working (or are on vacation), you have a right to a substitute day off with public holiday pay, or you may agree (in writing) to public holiday pay only.

If the public holiday falls on a day when you are not on an assignment, you may be entitled to public holiday pay only.

Example 1:

Two months after her last assignment, an employee is placed on a two week assignment working Monday through Thursday each week. She is paid \$1000 per week. The current assignment begins one week prior to the week Family Day occurs and ends the Thursday following the holiday. She would ordinarily have worked on the day the holiday fell (pursuant to her assignment) so is entitled to Family Day as a day off with public holiday pay for the day.

Her public holiday pay in this case is calculated as the regular wages she earned (\$1000) plus any vacation pay payable (\$0) within the period of four work weeks prior to the work week in which the holiday fell, divided by 20. Her public holiday pay for Family Day is \$50.

Example 2:

An employee is on an assignment from March 1 to April 30, 2010 and is scheduled to work only Tuesdays and Thursdays of each week. She earns \$1000 per week on this assignment. There is one public holiday during this assignment - Good Friday - which falls on the first Friday in April.

Because Fridays are not days that she is ordinarily scheduled to work pursuant to her assignment, she is entitled to a substitute day off for Good Friday with public holiday pay calculated as if the substitute day was a public holiday. The substitute day off must be scheduled within three months following the public holiday or within 12 months if the employee and employer agree. The public holiday pay is based on the regular wages earned and vacation pay payable in the four work weeks prior to the week in which the substitute day is scheduled, divided by 20. The substitute day off is scheduled for Thursday April 29. She earned \$4000 in regular wages (no vacation pay was payable) in the four work weeks prior to the week she is scheduled to take the substitute day off and is therefore entitled to \$200 in public holiday pay.

Alternatively, the employee may agree (in writing) to public holiday pay only for Good Friday (with no substitute day off). The public holiday pay is based on the regular wages earned (\$4000) and vacation pay payable (\$0) in the four work weeks before the week in which Good Friday falls. In that case, she would be entitled to \$200 in public holiday pay.

Example 3:

An assignment employee ends a six-month assignment on Friday, February 12, 2010. She had been earning \$800 a week while on that assignment. She is offered another assignment that begins on April 15, 2010 which she accepts. Family Day falls on February 15, 2010 but because she is on a lay-off when the holiday occurs, she is entitled to public holiday pay only for Family Day (no substitute day off). The public holiday pay is calculated as the regular wages earned and vacation pay payable in the four work weeks prior to the week in which the holiday falls, divided by 20. In this case, she is entitled to \$160 in public holiday pay.

Example 4:

An assignment employee ends a six-month assignment on May 30, 2010. Canada Day falls on July 1, 2010. She was available and able to work but was not offered another assignment between May 30 and July 1. Because she is on a lay-off when the holiday falls, she is entitled to public holiday pay only for the day. Her public holiday pay is calculated as the regular wages earned and vacation pay payable in the four work

weeks prior to the week in which the holiday falls, divided by 20. Because this amount was \$0, her public holiday pay for Canada Day is \$0.

If I get laid-off or terminated by the agency I work for, am I entitled to any compensation?

The “elect to work” exemptions regarding termination and severance were revoked, effective November 6, 2009, except with respect to elect to work “homecare” employees who provide certain professional, personal support or homemaking services for an employer who has a contract with a community care access corporation to provide those services. These homecare employees will continue to be exempt from termination and severance entitlements until October 1, 2012.

The following standards apply to all other assignment employees of temporary help agencies.

If you have been employed by a temporary help agency for at least three months, you will generally have a right to receive notice of termination if the agency ends your employment relationship. You may get notice while you are working, or pay instead of working notice.

Generally, the minimum notice you must get ranges from one week (if you have been employed for at least three months but less than one year) to eight weeks (if you have been employed for eight years or more). It is the length of time that you are employed by the agency that determines how many weeks of notice you must get, not the length of time working on assignments at clients of the agency.

In certain cases, you may have a right to mass notice of termination. Temporary help agency assignment employees generally have a right to mass notice if 50 or more are terminated by their agency in a four-week period because their assignments at a single client’s establishment ended. In such a case, each employee must get a minimum of eight, 12 or 16 weeks of notice (depending on how many employees are terminated).

If you have been an employee of an agency for five or more years, you could also have a right to severance pay. (The five years is based on total time spent in employment with the agency, not the length of time in any assignment.) You generally have the right to severance pay if the agency ends (severs) your employment and the agency either has a payroll of \$2.5 million or more, or severs the employment of 50 or more employees in a six-month period because it is discontinuing all or part of its business at an establishment. You must get severance pay of at least one week’s pay for each year of employment, to a maximum of 26 weeks’ pay.

At my assignment, I work side-by-side with regular workers, doing the same job, but I get paid less than they do. Can the agency do this?

Aside from minimum wage requirements, the government generally does not regulate wage rates.

Temporary Help Agencies

What information must I provide to my assignment employees?

Agencies are required to provide their assignment employees, in writing, with the agency's legal name (and operating or business name if that is different than the legal name) and contact information. They must also provide their assignment employees with an information sheet prepared by the ministry outlining the employees' employment standards rights.

When the agency offers an assignment with one of its clients, it must provide the employee with the following information when the offer is made:

- the client's legal name (and operating or business name if that is different than the legal name) and contact information
- the wage rate and benefits
- the hours of work
- a general description of the work
- the estimated term of the assignment (if known) and,
- the pay period and pay day.

If, due to the timing of the offer, the information cannot be given in writing before the employee starts the assignment, it must be provided in writing as soon as possible after the employee starts the assignment.

Can I charge assignment employees any fees?

You cannot charge assignment employees fees for the following:

- taking on a person as an assignment employee
- assigning work or attempting to assign work for an assignment employee
- assistance in preparing a resume or preparing for job interviews
- taking direct employment with a client of the agency.

Some of these services are necessary for employees to get assignments. These services can be expensive. Why can't I charge the employees some of the costs? After all, it is in their benefit since it will help them get work.

The agency also benefits when its employee receives an assignment through the fees it charges to its clients for the employee's services during the assignment.

Our contracts with our clients specify that they cannot hire the assignment employee directly without paying us a fee. As well, we stipulate that our clients cannot provide references to our employees. Do the changes to the act void these provisions in our contracts?

Yes. An agency cannot tell a client not to hire an assignment employee to be its own employee if the client wants to do so. You may charge the client a fee for hiring the employee if you assign the employee to the client, but only during the six-month period

beginning on the day the employee first started working for the client. As well, an agency cannot prevent a client from giving a letter of reference, if asked.

You cannot prevent the employee from taking a job with a client, and you cannot charge the employee a fee for taking that position.

I have an employee on an assignment with a client. The employee claims that the client refuses to allow meal breaks and rest periods. What can I do?

As the employer, you have a responsibility to ensure that the assignment employee's rights under the ESA, including receiving meal breaks and rest periods, are being complied with. If they are not, the employee may file a claim with the Ministry of Labour against you.

Clients of agencies should also be aware that they are prohibited from reprisal (retaliating) against an assignment employee (for example, by ending the assignment) because the employee is seeking to exercise his or her rights under the Act. A contravention of the client anti-reprisal provisions may result in an order for compensation and/or reinstatement into the assignment.

I understand that I am responsible for paying public holiday pay to my assignment employees. Do I have to pay them a day's wages, even though they have not worked on an assignment for some weeks before the holiday?

Ontario has nine public holidays. Generally, if an employee is on an assignment and the public holiday falls on a day when he or she would ordinarily be working, the employee has the right to take the public holiday off work and to be paid public holiday pay for that day.

If the employee agrees (in writing) to work on the holiday, the employee has a right to:

- public holiday pay plus premium pay (at least one and one-half times his or her regular rate of pay); or
- his or her regular rate of pay plus a substitute day off with public holiday pay.

If a public holiday falls on a day the employee is on an assignment but would not ordinarily be working (or is on vacation), he or she has a right to a substitute day off with public holiday pay, or the employee may agree (in writing) to public holiday pay only.

If the public holiday falls on a day when the employee is not on an assignment, he or she may be entitled to public holiday pay only.

If the employee is not on an assignment, you may still be required to pay public holiday pay. Public holiday pay is the regular wages earned, and vacation pay payable, in the four weeks before the week in which the holiday falls, divided by 20. So, if the employee did not work in the previous four weeks, the holiday pay would be zero; if the employee only worked for a portion of the previous four weeks, the holiday pay would be 1/20th of the earnings and vacation pay owing during those four weeks. All of the regular wages earned and vacation pay payable to the assignment employee by the agency is

included, regardless of the number of assignments the employee was on within that four week period.

For a calculator to help you with public holiday pay, click [here](#).

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Her public holiday pay in this case is calculated as the regular wages she earned (\$1000) plus any vacation pay payable (\$0) within the period of four work weeks prior to the work week in which the holiday fell, divided by 20. Her public holiday pay for Family Day is \$50.

Example 2:

An employee is on an assignment from March 1 to April 30, 2010 and is scheduled to work only Tuesdays and Thursdays of each week. She earns \$1000 per week on this assignment. There is one public holiday during this assignment - Good Friday - which falls on the first Friday in April.

Because Fridays are not days that she is ordinarily scheduled to work pursuant to her assignment, she is entitled to a substitute day off for Good Friday with public holiday pay calculated as if the substitute day was a public holiday. The substitute day off must be scheduled within three months following the public holiday or within 12 months if the employee and employer agree. The public holiday pay is based on the regular wages earned and vacation pay payable in the four work weeks prior to the week in which the substitute day is scheduled, divided by 20. The substitute day off is scheduled for Thursday April 29. She earned \$4000 in regular wages (no vacation pay was payable) in the four work weeks prior to the week she is scheduled to take the substitute day off and is therefore entitled to \$200 in public holiday pay.

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An assignment employee ends a six-month assignment on Friday, February 12, 2010. She had been earning \$800 a week while on that assignment. She is offered another assignment that begins on April 15, 2010 which she accepts. Family Day fell on

February 15, 2010 but because she was on a lay-off when the holiday occurred, she is entitled to public holiday pay only for Family Day (no substitute day off). The public holiday pay is calculated as the regular wages earned and vacation pay payable in the four work weeks prior to the week in which the holiday falls, divided by 20. In this case, she is entitled to \$160 in public holiday pay.

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Rules for termination and severance of temporary help employees

How do I give notice of termination if the employee has not had an assignment for some time?

You must give notice of termination if you end the employment relationship with the assignment employee. You may either give notice while the employee is working, or pay instead of working notice. Generally, the minimum notice you must give is one week if the employee has been employed for at least three months but less than one year and eight weeks notice if he or she has been employed for eight years or more. The time the employee has worked for you is the time there has been an employment relationship between you and the employee, regardless of whether or not they have been on assignment. (Special rules apply when 50 or more employees are terminated in a four-week period.)

In calculating notice of termination and severance pay, do I have to take into account the time they were employees before November 6, 2009, even though at that time they were exempt from these requirements?

Employment with a temporary help agency prior to November 6, 2009 will be taken into account in determining whether an assignment employee is eligible for notice of termination and for severance pay, as well as for determining the amount of any notice or termination pay in lieu of notice and/or severance pay the employee may be entitled to.

I understand that termination and severance obligations may be triggered on or after November 6, 2009 if an employee was on a lay-off for a certain number of weeks. What is a week of lay-off for an assignment employee?

Under the ESA, a termination is generally triggered by a lay-off lasting more than 13 weeks in any period of 20 consecutive weeks, but in certain circumstances by a lay-off lasting 35 or more weeks in any period of 52 consecutive weeks. Generally, a severance of employment is triggered when an employee has been on a lay-off for 35 or more weeks in a period of 52 consecutive weeks.

A week of lay-off, for purposes of termination and severance entitlements, generally means a week in which the assignment employee is not on an assignment, but does not include certain weeks. A week of lay-off does not include a week defined as an “excluded week”.

What is an excluded week?

An excluded week is a week in which, for one or more days, the employee is:

- Not able to work - for example, is sick
- Not available to work – for example, is on leave or has advised the agency that he or she will not accept an assignment to perform work
- Refuses an offer of work that would not be a constructive dismissal,
- On a disciplinary suspension,
- Not assigned to perform work for a client because of a strike or lock out at the agency.

When are “excluded weeks” counted?

They are not counted as one of the 13 or 35 weeks of lay-off. But, they are counted in the rolling window as part of the period of 20 or 52 weeks to determine if a termination or severance of employment has been triggered by a lay-off.

What about weeks prior to November 6, 2009?

Weeks prior to November 6, 2009 will not be counted for the purpose of triggering a termination or severance of employment by a lay-off.