

# TEMPORARY HELP AGENCY EMPLOYEES



## Employment Standards Fact Sheet

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### **What is the purpose of the Employment Standards Act, 2000 (ESA) ?**

The ESA sets out rights of employees and requirements that apply to employers in most Ontario workplaces.

### **What work is not covered by the ESA?**

Most employees and employers in Ontario are covered by the ESA. However, the ESA does **not** apply to certain individuals and persons or organizations for whom they may perform work, including:

- Employees in sectors that fall under federal jurisdiction, such as airlines, banks, the federal civil service, post offices, radio and television stations and inter-provincial railways
- Individuals performing work under a program approved by a college of applied arts and technology or university
- A secondary school student who performs work under a program authorized by the school board that operates the school in which the student is enrolled
- People who do community participation under the Ontario Works Act, 1997
- Police officers (except for the Lie Detectors part of the ESA, which *does* apply)
- Inmates taking part in work or rehabilitation programs, or young offenders who perform work as part of a sentence or order of a court
- People who hold political, judicial, religious or elected trade union offices.

Employees of the Crown are excluded from some (but not all) provisions of the ESA.

For a complete listing of other work categories not governed by the ESA, please check the ESA and its regulations. Regulations set out exemptions to the law, special rules and details about how to apply certain sections of the ESA.

## **What is a temporary help agency?**

A temporary help agency is a company that sends its employees on temporary work assignments to its client businesses. The temporary help agency is the employer for the purposes of the ESA.

A temporary help agency is different from a “placement” agency. A placement agency, or “headhunter,” introduces a person looking for a job to a potential employers that may hire that person directly.

## **If I work through a temporary help agency, who is my employer?**

If you are sent by a temporary help agency to work for its client business, the agency is your employer not the client business. The agency, not the client business, is responsible for making sure that your rights under the ESA are met.

## **What are my rights under the ESA?**

Temporary employees, including those working through agencies, generally have the same ESA rights as other employees. The ESA sets minimum standards for:

- [Hours of work](#)
- [Overtime pay](#)
- [Vacation](#)
- [Public holidays](#)
- [Termination of employment](#)
- [Severance pay](#)
- [Leaves of absence](#): personal emergency, pregnancy, parental, family medical, and reservist leaves.

Minimum periods of employment are needed only for entitlement to a vacation, pregnancy, parental and reservist leaves, notice of termination and severance pay. Please see [Your Guide to the Employment Standards Act, 2000](#) for more information on the ESA.

## **What is an elect-to-work employee?**

Under the ESA, an elect-to-work employee may elect to work or not to work when requested to do so.

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. 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.

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. However, once an assignment is accepted, the employee must report to work as directed by the client business of the agency.

**Note:** Elect-to-work employees are not only employed by temporary help agencies. For example, a dentist's office may directly employ persons who are offered shifts under certain circumstances, such as when the regular receptionist calls in sick. If such an employee is offered a shift on a certain day, but can refuse the work with no negative consequences, that employee could be considered an elect-to-work employee.

## What are the special rules for elect-to-work employees?

As of January 2, 2009, all elect-to-work employees, whether or not they are employed by temporary help agencies, are entitled to the general [public holiday](#) provisions under the ESA.

All elect-to-work employees are also exempt from the [notice of termination](#) and [severance pay](#) requirements of the ESA.

### For More Information

If you have questions about the Employment Standards Act, call the Ontario Ministry of Labour's Employment Standards Information Centre at 416-326-7160, toll free 1-800-531-5551, TTY 1-866-567-8893, or visit a ServiceOntario Centre in person.

Information and ESA publications can be found at the Employment Standards section of the Ministry of Labour's website, [www.labour.gov.on.ca](http://www.labour.gov.on.ca).

*This fact sheet provides general information about temporary help agency employees as set out in the Employment Standards Act, 2000 (ESA) and the regulations. It is provided for your information and convenience only. It is not a legal document. For further information and the exact wording in the ESA, please refer to the ESA and the regulations.*

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The Employment Standards Information Centre can be reached at 416-326-7160, toll-free at 1-800-531-5551, or, for Hearing Impaired TTY, at 1-866-567-8893.

Information on the ESA can also be found at the Employment Standards section of the Ministry of Labour's website: [www.labour.gov.on.ca](http://www.labour.gov.on.ca).

You can order copies of the ESA and related information materials from: Publications Ontario, 1-800-668-9938; Hearing Impaired TTY 1-800-268-7095, or the Ontario government E-Laws website at [www.e-laws.gov.on.ca](http://www.e-laws.gov.on.ca).

