

IMPROVING COMPLIANCE WITH THE *EMPLOYMENT STANDARDS ACT, 2000* IN THE TEMPORARY HELP SECTOR

CONTEXT

The *Employment Standards Act, 2000* (ESA) was recently amended by the *Working for Workers Act, 2021* to create a temporary help agency (THA) and recruiter licensing framework. This framework is not yet in effect.

Various features of the framework must be prescribed by regulation. These include:

- Persons will be prohibited from operating as a THA without a licence. “Temporary help agency” is already defined in the ESA.
- Persons will be prohibited from acting as a recruiter without a licence. “Recruiter” would be defined in the regulations.
- Clients will be prohibited from knowingly using an unlicensed THA. Employers (and prospective employers) will be prohibited from knowingly using an unlicensed recruiter.
- THAs and recruiters will apply to the Director of Employment Standards (DES) for a licence (or renewal of a licence).
- The applicant will have to provide the required information, pay the prescribed fee, provide the prescribed security, and comply with other prescribed requirements.
- In certain circumstances, the DES will be either required to or have the discretion to refuse to issue or renew a licence, or to revoke or suspend a licence.
- A THA or recruiter whose application for a licence is refused or whose licence is revoked or suspended can apply to the Ontario Labour Relations Board to review the decision.

OBJECTIVES

The licensing framework will help the government achieve the following objectives:

- Encourage compliance and discourage underground economic activity;
- Help address worker vulnerability (e.g., those who are faced with poor working conditions, labour trafficking);
- Help client businesses of THAs and recruiters avoid working with non-compliant / underground entities; and,
- Help establish a level playing field and eliminate unfair competition from non-compliant entities and their clients.

Your feedback on the proposed questions below will provide valuable insight as the government determines the best ways to address these critical issues.

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ISSUES FOR DISCUSSION

The government is interested in your views on the following issues:

A. Definition of “recruiter”:

It is proposed that the term “recruiter” would be defined to include any person who, for a fee, finds or attempts to find, employment in Ontario for prospective employees. It would also include any person who, for a fee, finds or attempts to find, employees for prospective employers in Ontario.

What the government would like to know:

1. What are your views on this proposed approach to the definition of recruiter?
2. Should there be a specific exemption for individuals performing recruitment functions as part of their role in an organization or could such an exemption create an unintended loophole?
3. Should there be a specific exemption for individuals performing recruitment functions under a provincial program (e.g., Employment Ontario, Ontario Works, etc.)?
4. Are there any other scenarios where other exemptions would be required?

Stakeholder Comments

B. Application fee amount

It is proposed that a THA or recruiter applying to the DES for a licence, or a renewal of a licence, would be required to pay a \$750 fee.

What the government would like to know:

5. What are your views on this proposed application fee amount?

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C. Security (the amount, form, and purposes for which it may be ‘drawn down’ by the ministry)

It is proposed that a THA or recruiter applying to the DES for a licence, or a renewal of a licence, would be required to provide a \$25,000 security in the form of an irrevocable letter of credit.

Depending on the circumstances, the security could be used or “drawn down” by MLITSD to satisfy obligations owing under orders, for example:

- an order to recover fees, to pay wages or compensation under the ESA; or
- an order to repay fees, repay costs or to pay compensation under the *Employment Protection for Foreign Nationals Act, 2009*.

If the security is used for these purposes, there would be a requirement that the security be topped back up to \$25,000 within 30 days of receiving notice from the DES that the security was used.

The security would be returned if a licence expires or is cancelled, revoked, or suspended (it could be held by the DES for up to six months after expiry, cancellation, revocation, or suspension of a licence, but could be longer if a complaint is filed in case the monies are needed to pay the complainant).

What the government would like to know:

6. What are your views on this proposed requirement to provide a security of \$25,000, the form and purposes for which it may be ‘drawn down’ by the ministry?

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D. Opportunity to show evidence of compliance with licensing requirements (“cure period”)

It is proposed that regulations would provide for rules specifying time periods to show evidence of compliance in certain circumstances where the DES has given notice of intention to deny, revoke or suspend a licence.

- For applications for new licences or renewals, an applicant would be given notice if there is an intention to refuse to issue or renew a license. Applicants would have 60 days to show evidence of compliance before the licence or renewal is refused.
- A licensee would be given notice if there is an intention to suspend or revoke a licence. Licensees would have 60 days to show evidence of compliance before the licence is suspended or revoked.

What the government would like to know:

7. What are your views on this proposed approach to the “cure period”?
8. Do you think that there are any contraventions that should result in the immediate revocation/suspension of a licence (i.e., there would be no cure period given to licensee)?

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E. Administrative monetary penalties (notice of contravention amounts)

The government is proposing administrative monetary penalties (i.e., Notices of Contravention) for non-compliant THAs, recruiters and client businesses. The penalties would cover the following contraventions:

- Prohibition against a THA operating without a licence.
- Prohibition against a client using an unlicensed THA.
- Prohibition against a recruiter operating without a licence.
- Prohibition against an employer or prospective employer using an unlicensed recruiter.
- Prohibition against provide false or misleading information.
- Requirement for THAs and recruiters to provide notice that a licence has been refused, revoked, or suspended.

The penalty for a first-time contravention is proposed to be \$15,000. The penalty for a second contravention is proposed to be \$25,000 if it occurs within 3 years of the first contravention. The penalty for a third contravention is proposed to be \$50,000 if it occurs within 3 years of the second contravention. Any additional contraventions that occur in that 3-year period would be \$100,000.

What the government would like to know:

9. What are your views on the proposed administrative monetary penalty approach?

Stakeholder Comments

F. Issuance of a licence

Under the licensing framework, the DES will issue/renew a licence if the DES receives an application and is satisfied that the applicant has complied with orders issued under the ESA and/or *Employment Protection for Foreign Nationals Act, 2009* (EPFNA) and meets the licensing requirements set out in the ESA and the regulations. The ESA includes a list of requirements as part of the application for a licence or renewal of a licence. In addition, the government is contemplating prescribing other requirements such as:

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- providing information about every location the applicant carries on business, including international locations; and
- whether the applicant has previously applied for a licence under a different name.

The DES can also request that an applicant provide any other information that is relevant to the decision as to whether or not to issue a licence or renewal.

What the government would like to know:

10. What are your views on the proposed approach to the issuance of a licence?
11. Is there any other information that applicants should be required to provide as part of the application?

Stakeholder Comments

G. Circumstances to deny / revoke / suspend a licence

Under the licensing framework in the ESA, the DES must refuse to issue or renew a licence if:

- the applicant has not complied with an order issued under the ESA or EPFNA;
- the applicant fails to meet the licensing requirements set out in the ESA or the regulations;
- the applicant has ever charged a fee to a foreign national in contravention of s. 7(1) of EPFNA or the applicant uses the services of any person, other than an employee of the applicant, that has ever charged a fee or collected a fee charged to a foreign national in contravention of EPFNA; or
- any other prescribed circumstances exist.

The DES may also refuse to issue or renew a license if the DES has reasonable grounds to believe that:

- based on the conduct of the applicant, or any officers, directors or representatives of the applicant, the applicant will not carry on business with honesty and integrity and in accordance with the law; or

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- the applicant has made a false or misleading statement or provided false or misleading information in an application for a licence or a renewal of a licence.

The DES can revoke or suspend a license on any ground in the two lists above on which the DES might have refused to issue or renew the licence.

A temporary help agency or recruiter whose application for a licence is refused or whose licence is revoked or suspended can apply to the Ontario Labour Relations Board to review the decision of the DES. Associated provisions in the ESA governing such applications for review would apply.

What the government would like to know:

12. Are there any other circumstances that *must* lead to a licence being denied, revoked, or suspended?
13. Are there any other circumstances where a licence *may* be denied, revoked, or suspended?

Stakeholder Comments

HOW TO RESPOND

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

Mail: Temporary Help Agency Consultations, Employment, Labour and Corporate Policy Branch, 400 University Avenue, 15th Floor, Suite 1502, Toronto, Ontario, M7A 1T7

Email: TemporaryHelpAgencyConsultations@ontario.ca

Please provide your responses by December 6, 2022.

Your input will help us address the critical issues that have been raised.

Thank you for taking the time to participate.

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NOTICE TO CONSULTATION PARTICIPANTS

Submissions and comments provided to the Ministry of Labour, Immigration, Training and Skills Development (the Ministry) are part of a public consultation process to solicit views on possible measures to address underground temporary help agencies. This process may involve the Ministry publishing or posting to the internet your submissions, comments, or summaries of them. In addition, the Ministry may also disclose your submissions, comments, or summaries of them, to other parties during and after the consultation period.

Therefore, you should not include the names of other parties (such as the names of employers or other employees) or any other information by which other parties could be identified in your submission.

Do not include your name or any other information by which you could be identified in the main body of the submission. If you do provide any information which could disclose your identity in the body of the submission, this information may be released with published material or made available to the public. However, your name and contact information provided outside of the body of the submission (such as that which may be found in a cover letter, on the outside of an envelope, or in the header or signature of an email) will not be disclosed by the Ministry unless required by law. An individual who provides a submission or comments and indicates a professional affiliation with an organization will be considered a representative of that organization and his or her identity in their professional capacity as the organization's representative may be disclosed.

Personal information collected during this consultation is under the authority of the *Employment Standards Act, 2000* and is in compliance with subsection 38(2) of the *Freedom of Information and Protection of Privacy Act*.

If you have any questions regarding the collection of personal information as a result of this consultation, you may contact the Employment Rights and Responsibilities Office, 400 University Avenue, 15th Floor, Toronto, Ontario, M7A 1T7, or by emailing TemporaryHelpAgencyConsultations@ontario.ca.