

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

CONTEXT

Temporary help agencies play a prominent role in Ontario's economy. The Workplace Safety and Insurance Board estimates that there were over 128,000 full-time equivalent workers employed by temporary help agencies in 2019. This represented at least 2.6% of employment in Ontario. It is apparent that work through temporary help agencies is a prominent part of the economy.

Temporary employment through agencies helps Ontario businesses to address many situations effectively: employee absences, short-term spikes in demand, and other time-limited circumstances. But there are also circumstances in which agencies, particularly those operating "underground", have added to the precarity of workers and created an unfair competitive environment for law-abiding businesses.

Temporary assignment employees generally have the same rights under the *Employment Standards Act, 2000* (ESA) as other employees, and there are also additional rules that apply where there is a temporary help agency relationship. These rules apply to assignment employees, the agencies, and clients of temporary help agencies.

The government takes the enforcement of employment standards very seriously and enforces the ESA by investigating all claims filed with the Ministry of Labour, Training and Skills Development, inspecting workplaces across the province and conducting enforcement blitzes. Ministry enforcement efforts have found a range of employment standards violations, including those related to pay periods, wage statements and record keeping. However, in spite of the ministry's ongoing efforts, some temporary help agencies persistently do not follow the rules.

Operating underground without regard to basic legal requirements creates an unfair competitive advantage for underground agencies. It puts law-abiding agencies and employers at a disadvantage. Law-abiding businesses often need reliable temporary employment services, but they take on a major risk and significant liability when they deal with underground agencies. This underground activity also deprives vulnerable workers of their basic employment entitlements.

There have been calls for greater efforts aimed at underground temporary help agencies. Several reports and studies have cited evidence of a wide range of labour abuses, including through the use of underground temporary help agencies. They have also noted the particular vulnerability of assignment employees, their poor working conditions, and other employment related concerns, which may be more widespread among underground agencies. These issues have been magnified by recent events such as the widespread use of underground temporary help agency employees in farming operations, which may have contributed to outbreaks of COVID-19 on farms.

In addition, recent ministry inspections have uncovered a network of related temporary help agencies supplying employees to various sectors throughout the province. A

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significant portion involving undocumented workers who are being paid “under the table”, often at rates below the minimum wage, and who are not receiving other minimum entitlements and, in some cases, may be victims of labour trafficking.

OBJECTIVES

To ensure that the government is better able to locate these non-compliant agencies and enforce the ESA, the ministry is considering creating a registry for temporary help agencies and penalties under the ESA if they fail to register.

The objectives of creating a registry would include the following:

- encouraging compliance with the ESA by impeding the ability of temporary help agencies to operate underground;
- helping to address broader issues related to the vulnerability of some assignment employees such as poor working conditions and labour trafficking;
- helping the clients of temporary help agencies avoid working with underground agencies; and,
- establishing a level playing field and eliminating competition from non-compliant agencies and their clients.

Your feedback to the questions posed in this paper will provide valuable insight as the government determines the best ways to address these critical issues.

CURRENT ESA RULES

For information on ESA rules for temporary help agencies, clients of temporary help agencies and assignment employees, please visit the Ministry of Labour, Training and Skills Development’s website at <https://www.labour.gov.on.ca/english/atwork/agencies.php>.

Employment Standards Officers have a variety of enforcement tools available to them and once a decision is made that a contravention of the ESA has occurred, an Officer can issue:

- an order to pay wages;
- a compliance order;
- a ticket under Part I of the *Provincial Offences Act* (POA);
- a Notice of Contravention; or,
- for certain violations, an order to reinstate and / or compensate an employee.

Officers can also initiate prosecutions under Part III of the POA against persons and corporations. For information on the ministry’s enforcement activities, including statistics on claims, inspections, and prosecutions, please visit <https://www.labour.gov.on.ca/english/es/pubs/enforcement/index.php>.

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ISSUES FOR DISCUSSION

The government is interested in your views on the following three areas:

A. Temporary Help Agency Registry:

Temporary help agencies are not required to register with the government in order to operate in Ontario and clients of temporary help agencies may contract with any agency to meet their staffing needs.

To enhance the regulation of temporary help agencies in the province and support current enforcement activities, the government could amend the ESA to require agencies to register with the Ministry of Labour, Training and Skills Development.

The amendments could establish registration requirements and prohibit clients from hiring an assignment employee from an unregistered agency.

A registry would be a single source for clients looking for temporary help agencies to confirm that they are dealing with a registered agency.

What the government would like to know:

1. In your opinion, what would be the advantages and disadvantages of a temporary help agency registry? How could the disadvantages be mitigated?
2. What requirements should be in place for a temporary help agency to be included on a government administered registry (for example, that it has no violations of employment standards legislation)?
3. How much transition time would be needed to ensure that temporary help agencies and clients of temporary help agencies are aware of their new obligations?
4. How should the government educate the public on any new requirements in order to best reach all those who may be affected, including vulnerable individuals?

B. Penalties for Non-Compliant Agencies and Client Employers:

For a registry to be effective, there should be a strong incentive for agencies to register and for clients of temporary help agencies to accept assignment employees only from registered agencies.

Specific penalties could be established to address the failure of a temporary help agency to register with the government and the provision of false information. Client businesses of temporary help agencies could also be subject to penalties if they engage the services of an unregistered agency or if they fail to retain evidence that they contracted with a registered agency. Penalties could include administrative penalties such as Notices of Contravention under the ESA and offences under the POA.

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What the government would like to know:

5. If the government implements a temporary help agency registry, how could it ensure that all agencies register, and all clients of temporary help agencies only accept assignment employees from registered agencies?
6. What monetary amount(s) would serve as an effective deterrent to temporary help agencies and clients of temporary help agencies seeking to avoid their legal obligations under the ESA by not complying with the temporary help agency registry requirements?

C. Alternatives to a Registry:

Some Canadian jurisdictions have implemented models other than a registry to enhance the regulation of temporary help agencies. For example, some require temporary help agencies to be licenced before they can operate legally.

Key features of a licencing scheme typically include: renewal periods (e.g., licences are valid for a specific period unless they are cancelled or suspended by the government); revocation rules (e.g., for reasons such as making a false or misleading statement in the application or for current and previous contraventions of employment legislation); requirements for clients of temporary help agencies to do business with licence holders; and a publicly available list of licence-holding agencies.

What the government would like to know:

7. What would be the advantages and disadvantages of a licencing scheme as opposed to a registry?
8. Are there other alternative models that the government should consider?

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, Training and Skills Development by:

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

Email: TemporaryHelpAgencyConsultations@ontario.ca

Please provide your responses by Friday, January 29th, 2021.

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

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, 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.

Further, if you, as an individual, do not want your identity to be made public, you should 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 Ministry's Freedom of Information Office, 400 University Avenue, 10th Floor, Toronto, Ontario, M7A 1T7, or by calling 416-326-7786.