

28 January 2021

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

Sent by email to: TemporaryHelpAgencyConsultations@ontario.ca

Dear Consultation Staff:

Re: Temporary Help Agency Consultation

Injured Workers Community Legal Clinic is a legal aid clinic with a province wide mandate. We have specialized in the area of workers compensation law since 1969. As a legal aid clinic, our services are provided to people with little or no income and there is no charge for legal clinic services. In addition to legal advice and representation, our mandate include community development, public legal education and participation in law and policy reform.

Thank you for looking into the working conditions of temporary help agency workers and for inviting our comments. We have encountered many temporary help agency workers in need to legal advice and representation. Temp agency workers do the most dangerous work with the least protection and with lower wages and benefits.

In our experience, your premise is correct. There are circumstances in which the practices of temporary help agencies have added to the precarity of workers and created an unfair competitive environment for law-abiding businesses.

In our experience, this is not limited to agencies operating underground, it is endemic to this sector of our economy. And the negative impact extends beyond violations of the Employment Standards Act to problems in workers compensation and occupational health and safety.

For example, when a temporary help agency worker is injured on the job, the accident costs are attached to the temp agency, not the client employer whose workplace injured the worker. The claims costs metrics create a strong financial incentive for employers to contract out their more dangerous work.

In 2014, the *Workplace Safety and Insurance Act* (WSIA) was amended through the *Stronger Workplaces for a Stronger Economy Act, 2014* (Bill 18). Schedule 5 amended section 83(4) of the WSIA to give the government the power to make a regulation that client companies of temporary help agencies are liable for WSIB premiums based on injuries, accidents and deaths of their temp agency workers, instead of the temp agency bearing that liability. Unfortunately, regulations have not yet been made. The government can and should take this step immediately.

We endorse the joint submission by the Parkdale Community Legal Services (PCLS), Workers' Action Centre (WAC) and Migrant Workers Alliance for Change (MWAC). The solution to many of the problems encountered by temporary help agency workers is a legislative requirement for all temporary help agencies and recruitment agencies to be licensed in order to operate in Ontario. Client companies must be prohibited from using unlicensed agencies.

We support the recommendations in the joint submission, which are:

1. We strongly recommend that the regulations set out under WSIA s 83(4) be immediately brought into effect.
2. Ontario should follow Quebec, British Columbia and Alberta in requiring that both temporary agencies and agencies that recruit migrant workers be required to obtain a license from the Ministry of Labour, Training and Skills Development (MLTSD) to operate in Ontario. Licenses should be separate, require names of all individuals and corporate entities associated with the operation seeking licensing and be valid for one year.
3. We recommend that Ontario follow the lead of British Columbia and make agencies liable for any violations by partners, affiliates or agents of the recruiter and the temporary help agency.
4. TFW and Recruitment Agencies must provide a security deposit in order to obtain a license.
5. A public list of recruiter and temporary agencies must be created.

6. Client companies should be required to maintain records of all temporary agencies and their assignment employees under contract for up to two years (ESA limitation period).
7. In addition to the general licensing requirements, Ontario should consider restricting the pool of people that can become licensed as recruiters of migrant workers as is the case in Manitoba.
8. There should be a mandatory registry of employers.
9. Enforcement must include:
 - Full disclosure along the recruitment process and subcontracting supply chain.
 - Joint liability along that supply chain. Client companies and temporary help agencies are already jointly liable for reprisals and unpaid wages, overtime and holiday pay. This must be extended to include joint liability among subcontracted agencies for licensing. This is necessary to stop client companies and agencies from evading the licensing system by subcontracting to smaller and more informal temporary agencies that are not licensed and that operate under the radar. Similarly, recruiters must be liable for any illegal fees charged to workers along the supply chain whether that takes place in or outside of Canada.
 - Temporary help agency employees and migrant workers must be able to make anonymous complaints of any violations of the new licensing system.
10. We recommend that the security deposit be no less than \$25,000.
11. There should be a minimum set (automatic) fine of \$15,000 for failing to use a licensed agency directly or indirectly.
12. We recommend that the mandatory licensing be brought into effect 6 months after enabling legislation has been passed.

Thank you for considering our submission.

Yours Truly,
Injured Workers Community Legal Clinic
Per:



John McKinnon
Executive Director