



Management Labour and
Employment Lawyers

THE EMPLOYERS'Edge BULLETIN

Temporary Workers Legislation Has Passed

As discussed in previous E-Bulletins, the employment standards legislation governing temporary workers in Ontario will drastically change this November due to the recent passage of Bill 139. The Ontario government has enacted legislation to help provide greater protection to temporary or “assignment workers” as part of a larger “poverty reduction” initiative to assist low income workers. It is estimated that more than 700,000 people in Ontario work as temporary or assignment employees. As a result, this legislation will impact a large segment of Ontario’s workforce.

“Temporary help agencies” are defined in the new legislation as employers that “employ persons for the purpose of assigning them to perform work on a temporary basis for clients of the employer”. The legislation is significant in many ways, a number of which are discussed below.

Initially, the legislation states that a temporary help agency is to be considered the employer of the assignment employee whether or not the employee has been placed with a client on a temporary basis. Upon hiring the assignment employee, the agency must provide the employee with the legal name of the agency (including any operating or business name if different), the agency’s contact information (including address, telephone number and contact names), and a copy of an information document published by the Director of Employment Standards which sets out information about the rights and obligations of assignment employees, temporary help agencies and their clients.

Further, the legislation provides that an assignment employee’s work assignment for a client starts on the first day the employee performs work for the client and ends at the conclusion of the term of the assignment, or when the assignment is ended by the temporary help agency, the employee, or the client.

**Suite 430, 2 County Court Blvd.
Brampton, ON L6W 3W8
Tel: 905-874-9343
Fax: 905-874-1384**

info@ccpartners.ca
www.ccpartners.ca

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Prior to the assignment the legislation requires the temporary help agency to provide the employee with written confirmation of the following: the legal name of the client (along with the operating business name if different); contact information for the client (including address, telephone number, and contact names); the hourly wage or any other rate or commission (including applicable benefits); work hours; a general description of the work to be performed at the assignment; the pay period and pay day established by the agency; and the estimated term of the assignment.

Temporary help agencies will be prevented from charging fees to assignment and prospective assignment employees if they become an assignment employee of the agency, in order to obtain a placement with a client or potential client, with respect to assistance or instruction in resume preparation or interview preparation, and with respect to an assignment employee entering into an employment relationship with a client of the agency. In addition, an agency cannot charge a client if that client hires an assignment employee, unless the hiring occurred during the six-month period in which the assignment employee first began performing work for the client.

Significantly, contractual provisions between a temporary help agency and a client or between the agency and an assignment or prospective assignment employee, which are contrary to the above fee restrictions will be void, whether the agreement was entered into before or after the date this legislation comes into force.

A temporary help agency will be considered to have laid-off an assignment employee for a week if the employee is not assigned to work for an agency client during that week. As is the case with other employees, a temporary layoff must not exceed more than 13 weeks in a 20 week period, or not more than 35 weeks in a 52 consecutive week period where the employee continues to receive certain payments or benefits from the agency. If the layoff exceeds the applicable period, the employee's employment will be considered terminated.



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Certain weeks are “excluded” and do not count towards the 13 or 35 week threshold; those being weeks in which for one or more days the employee is not able or available to work, refuses an offer by the agency that would not constitute constructive dismissal, is subject to disciplinary suspension, or is not assigned work for a client of the agency because of a strike or lock-out occurring at the agency. Excluded weeks, however, are contained in the 20 or 52 consecutive week spans that the layoff periods are measured against.

Finally, temporary help agencies will be expected to give notice of termination (or termination pay) and severance pay, where applicable. However, the legislation sets out special rules for the calculation of these entitlements.

Clearly this legislation dramatically changes the legal regime surrounding the employment of temporary employees, and should be kept in mind by temporary employment agencies and their clients. The lawyers at Crawford, Chondon & Partners will continue to monitor this evolving area of the law.