

AMENDMENTS FOR TEMPORARY HELP AGENCY WORKERS IN THE *EMPLOYMENT STANDARDS ACT, 2000*

By Gordon B. Woods

On December 9, 2008, the Ontario Government introduced Bill 139, the *Employment Standards Amendment Act (Temporary Help Agencies), 2008* (the “Act”), and it also announced changes to the *Employment Standards Act, 2000* regulations. The Act and regulations amend several provisions affecting temporary help agency employees as well as those employees classified as “elect to work”.

With respect to the temporary help agency employees (referred to as “assignment employees”), if passed, the Act will clarify that the agency is the employer, not the client business. It will be the agency’s responsibility to ensure that a worker’s employment standards rights are met. However, even though the client business will not be the employer, the Act will impose obligations with respect to its treatment of assignment employees. For instance, client businesses will be prohibited from engaging in reprisals against an assignment employee for asserting an employment standards right. In addition, if the agency owes the assignment employee wages and the client business owes the agency money, the Director of Employment Standards will be able to make a demand on the client business to pay that money to the Director to disperse to the assignment employee.

One of the key components to the Act is the removal of barriers which prevent or discourage assignment employees from attaining permanent employment with a client business. Under the Act, agencies will be prohibited from restricting a client business from providing a permanent position to an assignment employee, or from charging the client business a “temporary to permanent” fee after six months have passed from the time assignment began. Agencies will also be prohibited from restricting an assignment employee from taking permanent employment with a client business.

The Act will prohibit agencies from charging fees to assignment employees or proposed assignment employees. For instance, an agency will be prohibited from charging a fee just so an individual can become an assignment employee. Agencies will also be prohibited from charging an assignment employee a fee for providing assistance in finding, or attempting to find, work with a client business. Agencies will not be allowed to charge a fee to an assignment employee, or prospective assignment employee, for assistance in preparing a resume or preparing for job interviews.

Under the Act, agencies will be required to provide assignment employees with certain information when that individual is assigned to a client business. In particular, agencies will be required to provide, in writing, the client business’ legal name and contact information, as well as information on wages, benefits, hours of work, the pay schedule associated with the assignment, as well as a general description of the work to be performed for the client business.

In conjunction with the *Act*, the Ontario Government announced changes to the treatment of “elect to work” employees. Under the *Employment Standards Act, 2000*, employees who “may elect to work or not when requested to do so” are exempt from the requirements regarding public holidays, notice of termination and severance. However, the Ontario Government passed a regulation eliminating the exemption relating to public holidays and announced its intention to pass a regulation eliminating the exemption relating to notice of termination and severance pay. As a result, from January 2, 2009 on, all “elect to work” employees will be entitled to public holiday pay, and in the future could also be entitled to notice of termination and severance pay under the *Employment Standards Act, 2000*.

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