
Bill 139 – New Rights for Temporary Workers, New Obligations for Temporary Help Agencies

On December 9, 2008, the Ontario Government introduced Bill 139, the *Employment Standards Amendment Act (Temporary Help Agencies), 2008*. The proposed legislation is part of the provincial government's Poverty Reduction Strategy, which aims to assist low-income workers and families. Bill 139 is intended to respond to the perceived gap in income and job security between temporary and permanent workers. If passed, Bill 139 will amend the *Employment Standards Act, 2000* (ESA) to provide certain protections for temporary workers (referred to in the Bill as "assignment employees"), and to remove the barriers that prevent such employees from obtaining permanent employment. The proposed amendments will have a considerable impact on the 1000 temporary help agencies in Ontario, the 700,000 temporary workers, and the organizations that use their services.

ELECT-TO-WORK EMPLOYEES NOW ENTITLED TO HOLIDAY PAY

Bill 139 is part of a larger strategy to provide statutory protections for assignment employees and elect-to-work employees that began earlier in 2009. "Elect-to-work" employees are those employed on a casual basis, and have the ability to refuse work assignments without suffering negative consequences. Assignment employees are often considered elect-to-work employees. Due to the flexible nature of elect-to-work employment, such employees were traditionally exempt from certain ESA rights, such as the right to severance pay, to notice of termination and to public holiday pay entitlement.

This changed on January 2nd, 2009, when Ontario Regulation 432/08 became effective. The regulation removed the holiday pay exemption for all elect-to-work employees, entitling such employees to holiday pay. If passed, Bill 139 will remove the exemptions mentioned above for all assignment employees, however, the government has announced its intention to pass further regulations that will remove those exemptions in respect of all elect-to-work employees. Employers can expect these regulatory changes after Bill 139 is law.

PROTECTIONS FOR ASSIGNMENT EMPLOYEES

Bill 139 contains numerous provisions designed to protect assignment employees and promote parity between temporary and permanent workers. It clarifies that the agency is the employer of the assignment employee, and that the employment relationship does not cease just because the assignment employee was assigned work with a client business. As the employer, the agency is responsible for ensuring that the worker's employment standards are met, and, under the proposed legislation, client businesses will be prohibited from engaging in reprisals against an assignment employee for asserting his or her rights.

Temporary help agencies will also be prohibited from charging assignment employees certain fees which are currently common practice in the industry. For example, fees for joining the agency, or fees associated with finding a temporary placement for the assignment employee, will both be prohibited under the proposed legislation. Similarly, temporary help agencies will be prohibited from charging fees for services such as résumé writing or job-interview preparation.

Bill 139 also places obligations on temporary help agencies to provide their assignment employees with information regarding both the agency and the client business. Legal and operating names, and contact information of the agency and the clients must be provided. In addition, in respect of actual work assignments, the agency must provide the wages and benefits associated with the assignment, the hours of work, a general description of the work, and the pay period and pay day. This information is required to be provided to assignment employees immediately upon hiring, or, if the temporary worker was hired prior to the amendments, then as soon as possible after the amendments come into force.

REMOVING BARRIERS TO PERMANENT EMPLOYMENT

There are a number of practices employed currently by temporary help agencies which are seen to create barriers to obtaining permanent employment for assignment employees. For example, many temporary help agencies prevent client businesses from providing references in respect of the assignment employee's work. Also, the contracts between the agency and the assignment employee, as well as the contracts between the agency and the client businesses, often contain restrictive provisions which prevent the employee from being hired permanently by the client business. Where the contract does permit the hiring of an assignment employee by the client business, usually there are significant "finder's fees" that are charged either to the client business or the assignment employee him or herself.

The amendments contained in Bill 139 are designed to address such practices by prohibiting temporary help agencies from doing any of the following:

- Restricting an assignment employee from entering into an employment relationship with a client business;
- Restricting a client business from entering into an employment relationship with an assignment employee;
- Charging a fee to an assignment employee in connection with a client business entering into an employment relationship with the assignment employee;
- Charging a fee to a client business in connection with the client business entering into an employment relationship with an assignment employee where a six month period from the start of the assignment has passed.

In our view

Bill 139 would significantly affect employers that directly employ assignment employees as well as organizations that use the services of temporary help agencies. If Bill 139 is passed into law, such organizations should familiarize themselves with the new provisions of the ESA and ensure that the terms of their contracts are reviewed for compliance with the new requirements. The amendments stipulate that any term of an agreement that is inconsistent with the new provisions is void. This applies even where the agreement was entered into prior to the amendments coming into force. Employers should also undertake a review of the various fees that they charge once again to ensure compliance with the amended ESA.

For further information, please contact [Raquel Chisolm](#) at (613) 940-2755.

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