

Agriculture Sector: Using Temporary Help Agencies and Employment Standards

June 2021


Legal Disclaimer

- This presentation has been prepared to help employees and employers understand some of the minimum rights and obligations established under the Employment Standards Act, 2000 (ESA) and regulations.
- **It is not legal advice.** It is not intended to replace the ESA or regulations and reference should always be made to the official version of the legislation.
- Although we endeavor to ensure that the information in this presentation is as current and accurate as possible, errors do occasionally occur.
- The ESA provides minimum standards only. Some employees may have greater rights under an employment contract, collective agreement, the common law or other legislation. Employers and employees may wish to obtain legal advice.

Overview

1. Temporary Help Agencies (THAs) and the Employment Standards Act (ESA)
2. Engaging temporary help agencies
3. Inspections of Temporary Help Agencies

Temporary Help Agencies

Ontario 

Ministry of Labour, Training and Skills Development

Employment Standards Rights for Temporary Help Agency Assignment Employees

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The [Employment Standards Act, 2000](#) (ESA) sets minimum standards for most workplaces in Ontario, such as minimum wage and limits on hours of work. Special rules and exemptions apply to certain employees, including assignment employees of temporary help agencies. This information sheet gives information about your rights as an assignment employee. For more information on your rights visit [Ontario.ca/ESAguide](#) and select Temporary Help Agencies.

In addition to this information sheet, the temporary help agency must also provide you with the Employment Standards Poster within 30 days of starting your job. If your first language is not English, your employer must provide the poster to you in your first language, if you ask for it and it is available from the Ministry of Labour, Training and Skills Development. The poster is available for download at [Ontario.ca/ESAposter](#).

Are you an assignment employee?

You are an assignment employee of a temporary help agency if you and the temporary help agency agree that it will help you find temporary work assignments.

Your temporary help agency is your employer even when you are not assigned to work for one of their client businesses.

v. October 2020 1

- Responsible for ESA standards (e.g., minimum wage, public holiday pay, etc.) and THA specific responsibilities
- Must keep records of the number of hours an assignment employee works for each client in each day in each week
- Must provide information to the assignment employee, including:
 - An MLTSD information sheet
 - Information about the agency (e.g., contact info)
 - Information about each assignment
- Are prohibited from charging fees to:
 - Assignment employees for certain activities (e.g., to become employee of agency)
 - Clients for directly hiring the assignment employee (unless within first 6 months)

Clients of Temporary Help Agencies

Responsibilities and Liabilities under the ESA

Clients who engage an agency:

- Must keep records of the number of hours the assignment employee works for the client in each day and each week
- Are prohibited from reprisal against an assignment employee (e.g., for asking about their rights)

Clients who engage an agency may be held jointly and severally liable for the following unpaid wages:

- Regular unpaid wages
- Overtime Pay
- Public Holiday Pay
- Public Holiday Premium Pay

Surveys conducted during recent inspections showed almost 90% of client businesses were unaware of the client liability provisions.

If an assignment employee has not been paid by the agency, the client will be jointly and severally liable under the ESA for unpaid regular wages, overtime pay, public holiday pay and public holiday premium pay. This applies even when a client has paid the temporary help agency.

MLTSD shares compliance records of businesses with the federal government under an information sharing agreement.

Temporary Help Agencies in the Farming Sector

- The ESA contains a number of exemptions and special rules which apply to some farm employees.
- For example, employees who are employed on a farm whose employment is directly related to the primary production of eggs, milk grain, seeds, fruit, vegetables, mushrooms, bison, rabbits, maple products, honey, tobacco, herbs, pigs, cattle, sheep, goats, poultry, deer, elk, ratites, game birds, wild boar and cultured fish.
- The following do not apply to primary production employees:
 - Minimum wage, daily and weekly limits on hours of work, daily/ weekly /biweekly rest periods, time off between shifts, eating periods, three hour rule, overtime pay, public holidays or public holiday pay, vacation with pay.

There are special rules relating to employees who are employed on a farm to harvest fruit, vegetables or tobacco for marketing or storage.

These employees are subject to special rules regarding minimum wage, three hour rule, vacation pay and public holidays.

There are different rules relating to employees whose employment is directly related to near farming which includes:

- growing of flowers or trees and shrubs for retail and wholesale trade
- growing, transporting and laying of sod
- breeding and boarding of horses on a farm
- keeping of fur-bearing mammals (as defined in the *Fish and Wildlife Conservation Act, 1997*, and including foxes, lynxes, martens, mink and racoons) for circulation or commercial production of pelts

These employees are subject to exemptions for hours of work limits, daily/ weekly /biweekly rest periods, time off between shifts, overtime pay, public holiday pay, and eating periods.

Exemptions and special rules apply only to employees working on a single farm.

Engaging a Temporary Help Agency

Things to Consider

1. **Know the agency's responsibilities:** Do assignment employees receive wage statements? Are they regularly paid?
2. **Inquire about the agency's supplier:** Is the agency the supplier of the labour? Do they use subcontractors to supply labour?
3. **Read the fine print:** Make sure all expectations are clearly spelled out in the contract
4. **Do your research:** What do reviewers have to say about the agency?
5. **Inquire about membership:** Is the agency a member of a professional association? What is the association's code of ethics
6. **Check References:** What has the experience of other clients been?
7. **Beware of hidden fees:** Understand all the charges – and get them in writing – before engaging the services of an agency
8. **Check Contact Information:** Ensure you can quickly and easily contact the THA if you need to for any reason
9. **Be mindful of cash payments:** If payments are in cash, ensure they are well documented and easy to reconcile

Do the contract and fees make sense? Does the hourly rate for the employee cover all potential labour costs?

| | |
|------------------------------|----------------|
| Minimum Wage | \$14.25 |
| Vacation Pay (4%) | 0.57 |
| Employer Health Tax* (1.95%) | 0.28 |
| WSIB Premiums (avg 1.37%) | 0.20 |
| CPP (employer cont'n: 5.25%) | 0.77 |
| EI (employer cont'n: 2.2%) | 0.32 |
| Total | \$16.39 |

* Where payroll exceeds \$1M per year

Inspections of Temporary Help Agencies

Ongoing Inspection Initiative

- Since July 2020, MLTSD has been undertaking targeted inspections of temporary help agencies that service certain sectors, including the farming and food processing sectors.
- Information gathered to date suggests that THA employees can represent a substantial portion of the workforce
- A risk matrix is being applied to identify agencies at high risk of non-compliance with the ESA.
- Initiative is ongoing – statistics will evolve over time.

Highlights to Date

35 Inspections closed
– 17 Orders to Pay

More than \$2.5M
ordered

3,800 employees
impacted by orders

More than \$1.4M
recovered

Available Resources

Online Resources: Find information about the ESA online at [Ontario.ca/ESAguide](https://ontario.ca/ESAguide). This includes a specific chapter on [Temporary Help Agencies](#) that outlines specific rights and responsibilities for THA assignment employees, THAs and their clients

Information Sheets and Posters: [Posters and information sheets](#) are available in multiple languages. Specific information sheets must be provided to temporary help assignment employees (by the THA) and must be provided to foreign nationals (by their recruiter or employer)

Learn more via Webinar: [Upcoming webinars](#) on the ESA are posted as available

Call Us: The Employment Standards Information Centre is available to respond to questions on the ESA at 1-800-531-5551. Information is available in many languages.