



ARE YOU A TEMP AGENCY WORKER?

KNOW YOUR

RIGHTS
SERIES

Temp agency workers are covered under the Employment Standards Act like most other workers. The temp agency is your employer under the law, not the company where you work every day. This can be confusing when you are trying to assert your rights. It helps to understand how the law covers you and what to do if there is a problem at work.



NEW PROTECTIONS FOR TEMP AGENCY WORKERS EFFECTIVE NOVEMBER 2009

Changes were made to the Employment Standards Act in 2009 that added new protections for all temp agency workers in Ontario. Know what steps to take if your agency is not following the law.

No Fees

A temp agency cannot charge you money for signing up with them, assigning you work or helping with a resume or job interview. Job recruiters or “headhunters” can still charge a fee for finding you permanent employment with a company.

An Agency Must Give You Information About Your Assignment

Your agency must give you, in writing, their name and contact information. When they offer you an assignment, they must provide you with: the company name, wage rate, hours of work, description of work and length of assignment (if known) and the pay period and pay day. They should do this as soon as possible. They must also give you information about your rights from the Ministry of Labour.

Termination Pay

If you have been employed for at least three months, you have the right to receive notice or pay in lieu of notice if your employment relationship ends (terminated or no work for 13 weeks in a 20 week period). The length of time you have worked for the agency will determine how many weeks of notice or pay in lieu of notice you will receive.

Severance Pay

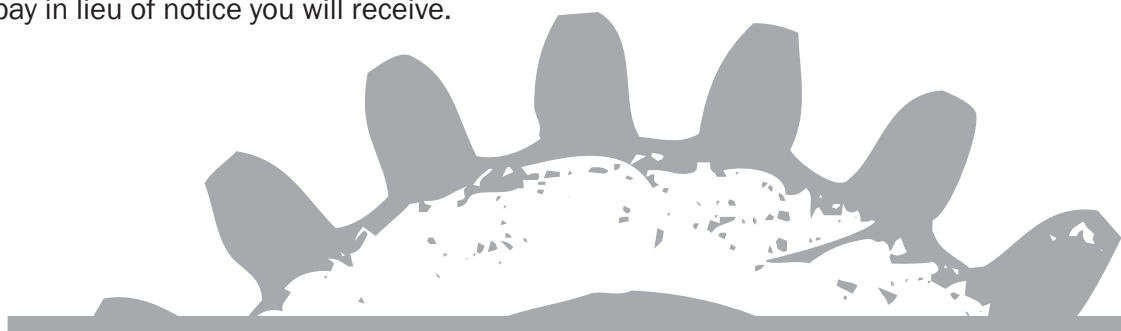
If you have been an employee of an agency for five or more years, you may also have a right to severance pay if the agency ends your employment. To qualify for severance the agency must also have an annual payroll of more than \$2.5 million or must have terminated 50 or more employees in the last 6 months. Severance pay is one week of pay for every year worked to a maximum of 26.

An Agency Cannot Stop You From Getting A Permanent Job

The agency can charge a fee to the company (not you) if the company wants to hire you directly. This fee can only be charged to the company in the first six month period after you are assigned at the company. An agency cannot stop a company from giving you a reference.

No Penalty for Asking About Your Rights

It is illegal for a temp agency to penalize you for asking about your rights. This is called a reprisal. The client company (where you work every day) can also be held responsible if you are penalized for trying to enforce your rights.



Hong worked through a temp agency at a large computer company for one year. He noticed a posting at the company for a permanent job that he was qualified for. He submitted his resume but was told that he could not apply as he was a temp agency worker. The company told him they would have to pay a penalty to the agency if they hired him. Hong told the company that the law had changed. They would not have to pay a fee or penalty because he had worked there for more than six months. The company accepted his resume for the permanent job.

TEMP AGENCY WORKERS ENTITLED TO PUBLIC HOLIDAYS. IT'S THE LAW!

New Year's Day

Family Day

Good Friday

Victoria Day

Canada Day

Labour Day

Thanksgiving

Christmas

Boxing Day

KNOW YOUR RIGHTS!

My agency tells me temp agency workers are not entitled to public holidays.

As of January 2nd, 2009, the law clearly states that temp workers have the right to public holidays as most other workers. Now temp agency workers have the right to 9 public holidays in Ontario.

How much should I get paid?

Your public holiday pay is the total of your previous four week's earnings (including vacation pay if paid out to you) divided by 20. For a full-time worker this is about a day's pay. For part-time workers it will be less. This can equal out to \$0 if you are not on assignment for the agency in the four weeks before the public holiday.

What if I'm not on assignment when a public holiday falls?

Temp agency workers that are not on assignment may also be eligible for public holiday pay. Your public holiday pay would still be based on your wages earned in the four weeks before the public holiday.

What if I work on the holiday?

You can agree in writing to either: be paid premium pay (1.5 x hourly rate) and public holiday pay OR work the public holiday at your regular rate of pay AND take another day off with public holiday pay.

My temp agency tells me I am an "Elect to Work" employee and not entitled to public holiday pay.

The government passed a regulation in December 2008 that removed the rule that says people who are elect to work are not eligible to public holidays. The government did this to make sure that all temp agency workers get public holidays. Agencies can no longer deny public holidays to workers by saying they are elect to work.

What if my agency does not pay me for the next public holiday?

Call us to find out what steps to take and how you can calculate your public holiday pay. Discuss how we can make sure your agency pays public holiday pay to all its employees.



Asha applied for work through a temp agency. After the Thanksgiving holiday, she asked the agency why she was not paid public holiday pay. She was told that she has to work for the agency for three months before she gets public holiday pay. This is illegal. You must only work your regularly scheduled shift before and after the holiday in order for the agency to calculate your public holiday pay. It may equal out to \$0, but the calculation should be carried out. Asha wrote down the details of what her agency told her and contacted the Workers' Action Centre for more information on her rights. Knowing she is owed wages, she can now decide which steps to take next.

PROTECT YOURSELF

- Keep records of all dates and hours you worked. Keep your records at home.
- Keep copies of all your pay stubs and T4's. Get a copy of your Record of Employment (ROE) when you leave an agency.
- Write a letter to your agency outlining what you believe you are owed. Give them a deadline to pay. There may be some risk if you are still working at the agency.
- The Ministry of Labour website has a public holiday calculator to assist you.
- File a complaint at the Ministry of Labour. For most unpaid wages you have 6 months from when the wages were due to file a claim.
- Call us to find out what to do when you discover an agency that is violating the law. Or report it to us in confidence.

HUMAN RIGHTS AND TEMP AGENCY WORKERS

It is legal for a temp agency to decide who they will send to which assignments or jobs. However, it cannot be based on the kinds of discrimination listed under the Human Rights Code.

The Human Rights Code prohibits workplace discrimination and harassment based on race, colour, ethnicity, country of origin, age, sex, sexual orientation, disability, marital and family status, religion and citizenship and pardoned criminal offences.

It is illegal for a temp agency to ask for your SIN, passport, date of birth or country of origin before they have offered you a job. A worker who believes they have faced discrimination can file a complaint with the Human Rights Tribunal.

Write down the details about what you believe is discrimination. It will help if you file a complaint.

GET SUPPORT

Workers' Action Centre

416-531-0778 or www.workersactioncentre.org

For information on your rights at work and support to make a plan.

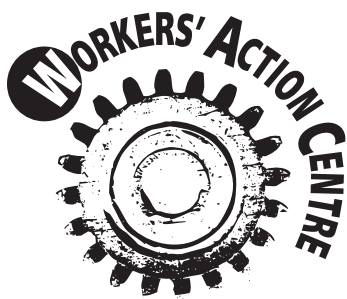
Ministry of Labour

Toll Free 1-800-531-5551 or www.labour.gov.on.ca.

Human Rights Legal Support Centre

Provides legal services if you feel you have experienced discrimination.

Toll free 1-866-625-5179 or www.hrlsc.on.ca



416-531-0778 | info@workersactioncentre.org
www.workersactioncentre.org

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