

**Bill 161 to license temporary and employment agencies is not  
able to protect temp agency workers: comprehensive  
reforms are necessary**

**Workers Action Centre  
Parkdale Community Legal Services  
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## **Bill 161 to license temporary and employment agencies is not able to protect temp agency workers: comprehensive reform is necessary**

Liberal MPP Vic Dhillon's Bill 161, the Vulnerable Workers Act, marks an important recognition of the significant and growing problems within the employment and temporary staffing industry. He outlined many of the critical issues facing workers within this unregulated multi-billion dollar industry:

- over-representation of women, immigrants and racialized communities in the lowest paying sectors of temp work;
- fly-by-night agencies where workers are not paid for work
- wages below the legal minimum wage
- workers not receiving public holiday pay
- workers not receiving overtime premium pay
- higher risks of health and safety problems

Based on our experience working with people in low-waged and precarious temp work, we would add the following issues:

- Illegal deductions from wages (e.g., administrative fee for work assignment; financial penalty when worker is not able to work)
- Fraudulent fees for temp agency workers (e.g., temp agency worker must pay \$500 if he/she is hired permanently by client company)
- Fraudulent fees for placement agencies
- Workers not receiving statutory vacation pay, termination or severance pay
- Workers' penalized for taking unpaid emergency leave (i.e., sick leave)
- Workers sent home without 3 hour minimum pay
- Barriers to workers being hired permanently by client companies
- Human rights violations in application, hiring and placements
- Barriers to Workplace Safety and Insurance benefits and Employment Insurance

The temp and employment agency industry has argued for self-regulation of the industry rather than government regulation to address problems in the industry. It points to a code of ethics which asks its members to follow labour laws. Quite clearly in the six years since the *Employment Agencies Act* was repealed, industry efforts have not been successful in bringing agencies into compliance with labour laws much less ethical practices not covered by current laws. Rather we have seen a growth in the practices outlined above.

It is precisely the lack of clear statutory provisions for this rapidly growing sector of the labour market that we see newly emerging practices that contravene the intent of employment standards. For instance, the industry has developed its own practices for public holiday pay outside of the Act. Asserting the temp workers are all "elect-to-work employees", almost all agencies that we have encountered do not pay public holiday pay or follow termination provisions. Being aware that this may give the industry a bad rep, some of the larger firms adopt a policy, based on the pre-ESA 2000 public holiday pay provisions, and require temp workers to work the equivalent of 3 months before some form of public holiday pay. Another example involves employment placement agencies. After the *Employment Agencies Act* was abolished in 2000 and the bar on charging workers fees for work was removed, the industry plotted a new and dangerous course.

While it still obtained fees from client companies for placement of higher paid, skilled and professional workers, in the case of lower paid, non-professional classes of workers, it began charging workers' fees for employment services. We are finding that, with particularly unscrupulous agencies, workers are being charged exhoriborant fees of thousands of dollars for training and placement services for work that never materializes. One final example of the impact of the lack of clear protection for the temp employment relationship is the rise of misclassification of employees in temp agencies as independent contractors to try to avoid statutory obligations. While this is happening in other sectors, a unique feature is arising where agencies classify workers as 'franchisee owners'. One example in the cleaning sector has the agency charging a \$3,000 fee for work assignments but it also charges workers for the cost of doing business – a 10% monthly administration fee and cleaning supplies.

Mr. Dhillon, and other MPPs who supported Bill 161 during its debate in the House December 7, 2006, rightly recognize that there are specific features of temp work that make workers even more vulnerable than permanent workers and, hence, in need of protection. There is an over-representation of recent immigrants, women and racialized communities in temp agency work. There are significant barriers to these workers pursuing justice in cases of employer violation.

But more than that, the triangular relationship of temp work makes regulation of this work different than more standard forms. Despite the practice of considering the temp agency as the 'employer of record', the reality is workers experience two employers. Two contracts shape their working experience; workers have contracts of employment with the agency and their working relationship is also defined by the contract between the client company and the agency. Further, temp workers receive direction on their work, supervision, hours of work, breaks, training, and termination from the client company. Other legislative regimes, such as the Health and Safety and Human Rights recognize that both the temp agency and Client Company have responsibility for the employee in this relationship. However, there is a failure of the current *Employment Standards Act* to recognize the real employer role of client companies in temp workers' employment. Workers are often left between a rock and a hard place trying to address workplace problems such as unpaid overtime, public holiday pay as the client company says 'take it up with the agency' and the agency says 'the problem is the client company didn't pay'.

Temp agency workers make 40 percent less than their permanent coworkers. Few temp agency workers get benefits compared to their permanent coworkers doing the same work. While the *Employment Standards Act* protects women from being paid less than men for doing the same work (s. 42) and prohibits discrimination of employment benefits on prescribed grounds (s 43), it does not address the discrimination in pay and benefits between temp and permanent workers.

We would argue that now, more than ever, protection of temp workers is required because of who they are, the triangular nature of the employment relationship and the gaps in the legislation to address this growing form of work. We need comprehensive reform that recognizes the need to protect people in this precarious form of work among complex institutional arrangements within a labour regime that is not adequately addressing this problem.

Mr. Dhillon states that the purpose of the Bill 161 is to establish a licensing process for the control and regulation of businesses that operate as employment agencies to essentially enforce

compliance with the law and bring honesty and integrity to temporary staffing and employment companies. We believe that the Bill as currently written will not achieve that goal.

The definition of 'employment agency' must be more expansive to capture new practices within the industry; for example new 'franchise' arrangements which are disguised employment or employment services that charge fees for training for jobs that never materialize. For licensing to be an effective part of an enforcement package, the qualifications for receipt of a license and decision making process must be clarified. While the Bill attempts to take into account the widespread manipulation of corporate structures in the abuse of statutory requirements, clarification of how this would be done is necessary. The Bill wrongly excludes workers from oversight of their workplaces, yet there is an extensive provision of appeal procedures for the employment agency. The Bill hinges on past practice of the agency based on claims to the Ministry on the one hand and inspections by the Ministry on the other. It is widely accepted that you can not base enforcement and compliance on individual claims. The majority of workers never come forward to make claims against employer violations. For temp workers, this is even more the case. Further most claims are settled making tracking of violations difficult. On the second matter, the Ministry is barely inspecting 1 percent of employers now due to insufficient resources and high demand for individual claims. Without adequate resources, enforcement will not take place. The result would be a licensing process that suffered much of the problems of the previous regime under the *Employment Agencies Act* in which licensing was essentially a rubber stamping of applications with no effective enforcement.

Licensing agencies is one very tiny step in an effective enforcement regime within employment standards. Further it needs to be placed within a comprehensive approach within the Employment Standards Act to protect temporary workers and work placements that includes the following:

- There should be no direct or indirect fees on workers for work placement services or assignment.
- There must be no monetary or other barriers to temp workers being hired by a client company of the agency.
- Illegal deductions must be stopped.
- Temp agency workers should get public holiday and other statutory entitlements
- The fee structure between client companies and temp agencies must be made transparent with the mark-up -- that is the difference between the temp workers hourly wage and hourly wage fee charged to the company – regulated according to real costs incurred and put in the employment agreement.
- We need new and expansive definitions of employer and employee that capture the triangular employment relationship.
- Client companies and agencies must be jointly liable for employees and statutory obligations.
- Equality of treatment in pay and employment benefits should be protected regardless of form of employment.

These are just some of the features of a comprehensive approach necessary to protect people in the most precarious temporary work. Underlying any strategy to protect temp workers and

regulate the industry must be a real commitment to provide the resources and enforcement measures that are necessary to make enforcement a reality. The government of Ontario must take leadership and provide public employment services for settlement and labour market restructuring to ensure fairness, especially for equity seeking groups such as newcomers and young workers, and not leave it up to unregulated private employment services.

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