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Temporary Help Agency Consultations,
Employment, Labour and Corporate Policy Branch
400 University Avenue, 15th Floor, Suite 1502
Toronto, Ontario, M7A 1T7

By email: TemporaryHelpAgencyConsultations@ontario.ca

Re: Improving compliance with the *Employment Standards Act, 2000* in the temporary help sector

We are submitting our comments on the temporary help consultation on behalf of the Workers' Action Centre, Migrant Workers Alliance for Change and Parkdale Community Legal Services. Please find our response to your consultation questions below.

Definition of “recruiter”

The government proposes defining the term “recruiter” to “include any person who, for a fee, finds or attempts to find, employment in Ontario for prospective employees. It would also include any person, who, for a fee, finds or attempts to find, employees for prospective employees in Ontario”.

We support this approach to the definition of recruiter. There should, however, be no exemptions from the new Licensing part of the Employment Standards Act (ESA). Exemptions will create loopholes that may allow companies or organisations to bypass the licensing requirements. For example, companies could simply move recruitment in house and still charge fees without licensure. This would make it difficult to enforce the prohibition of fees under the Employment Protection for Foreign Nationals Act (EPFNA) or the ESA.

Application fee amount

The government proposes that the fee for a licence or the renewal of a licence would be \$750. We support this amount for the fee. However, to maintain the integrity and effectiveness of the fee, it should be adjusted annually by the inflation rate.

Security

The government proposes a requirement to provide a \$25,000 security in the form of an irrevocable letter of credit when applying for a licence or renewal of a licence. The security will be used by the MLITSD to satisfy obligations owing under orders to recover fees or wages owed under the ESA and EPFNA.

We support the purpose of using the security to cover unpaid orders to pay. There are little capital costs involved in setting up recruitment or temporary help agencies. Increasingly, agencies operate through the internet and do not necessarily require much infrastructure. Therefore, owners can easily shut down operations under one name and reopen under another name with or without incorporation. Larger agencies may subcontract to smaller agencies without the client company knowing about it. These realities make it difficult to enforce orders to pay. As such, the requirement of an adequate security and ability to draw down on this security to satisfy outstanding orders to pay is necessary.

We recommend that the government require a \$50,000 security. In our experience, recruiters charge \$6,000 to \$10,000 per person for recruitment. A \$25,000 security would not be sufficient to cover the average fees being charged. Similarly, we have had recent cases of temporary help agencies [charging fees](#) of \$26,000 to \$30,000 to employees that leave assignments before a two year period has been met. The security must be up to the task of meeting more than one or two worker's orders to pay.

Opportunity to show evidence of compliance with licensing requirements (“cure period”)

The government proposes to give employers and recruiters 60 days to provide evidence of compliance before the licence is renewed or revoked. We believe this period of time is excessive and out of keeping with the periods to give notice under the ESA. Under the ESA s 116(4), parties have 30 days to appeal an order to pay. We recommend that a 30 day ‘cure period’ be adopted instead.

An immediate revocation/suspension of a licence should occur where there has been an order confirming reprisals under EPFNA or ESA or when an order confirms illegal fees have been charged under EPFNA or ESA.

Administrative monetary penalties (notice of contravention amounts)

The government proposes escalating penalties starting from \$15,000 for a first offence, \$25,000 for a second offence and \$50,000 for a third offence if any of these occurs within 3 years of each other. Any additional contraventions that occur in the 3-year period would be \$100,000. We support the proposed administrative monetary penalties. For the licensing regime to be effective, there needs to be real consequences for violating the Act and operating without a licence or using an unlicensed recruiter or agency. It is particularly important that the client using a temporary help agency or employer using a recruiter be held liable through financial penalties to ensure there are incentives to comply with the legislation. These parties are key in the recruitment chain and triangular temporary agency relationship and hold the most power to deter unlawful practices.

Issuance of a licence

To issue or renew a licence, the Director of Employment Standards (DES) must be satisfied that the applicant has complied with orders issued under the ESA and EPFNA. The government proposes additional requirements that the applicant provide information about every location the applicant carries on business, including international locations, and whether the applicant has previously applied for a licence under a different name. We support these proposed requirements. Such information is necessary to enforce the intent of the Act. That is, to ensure in order to get a licence parties must not have charged illegal fees or other violations.

To enhance enforcement measures, however, we recommend that the government also require that the applicant is not the nominee of another person, partnership or other entity. In our experience, smaller agencies or recruiters may use the name of spouses or other entities in conducting business to avoid detection.

Circumstances to deny / revoke / suspend a licence.

The government proposes that the DES may refuse to issue or renew a licence if there are reasonable grounds to believe the applicant, or any officers, directors or representatives of the applicant will not carry on business with honesty and integrity and in accordance with the law and if false or misleading information is in the application. We support these proposed regulations.

An immediate denial / revocation / suspension of a licence should occur where there has been an order confirming reprisals under EPFNA or ESA or when an order confirms illegal fees have been charged under EPFNA or ESA.

Yours truly,

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