

OCCUPATIONAL HEALTH AND SAFETY: Temporary Work Agencies and Temporary Worker Protection in Ontario

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Temporary Work Agencies

- The Ontario Ministry of Labour describes the business of temporary work agencies (TWAs) as providing employees to client businesses (client employers) that require staff on temporary assignments, which could be for short-term jobs of a few days or weeks, or even years.
- There are approximately 1,000 TWAs currently operating in Ontario.
- More than 600,000 people in Ontario now have temporary jobs.
- These staggering statistics reveal that temporary work has now become one of the largest sources of precarious employment in Ontario



Triangular Employment Relationship

The traditional employment relationship consists of one employer and one worker. However, in TWA work, there is a triangular employment relationship, where the workplace parties consist of a worker, the TWA and a client employer. This dynamic creates both theoretical and practical challenges when determining the status of TWA workers. In particular, it creates difficulties when determining who the employer is for the purpose of labour and employment law protection, and in turn, who is responsible for TWA worker health and safety in the workplace.

Purpose of the Act

The OHSA is interpreted broadly and purposefully because it is a public welfare statute, which was introduced with the goal of affording more effective health and safety rights to workers by holding an array of workplace parties accountable.

Who is a Supervisor?

A supervisor is someone who has “hands-on authority”. The test to determine who is a supervisor is objective and is based on the individual’s actual powers and responsibilities. Further, whether an individual considers himself or herself to be a supervisor is irrelevant.

The statutory definition of supervisor includes not only a person who has charge over a workplace, but who may also have authority over a worker, which includes having influence over what work is assigned, and how or when it is to be performed.

OFFENCES

The Ontario Court of Appeal has affirmed that offences under the OHSA are, unless otherwise established, strict liability offences. The Crown is only required to show that a worker was endangered and does not have to establish that the employer had actual knowledge of the danger.



The Ontario Occupational Health and Safety Act

Provinces have the constitutional power to legislate over matters pertaining to workplace health and safety. In Ontario, health and safety legislation is codified in the *Occupational Health and Safety Act*, R.S.O. 1990, c.01 (OHSA). The OHSA provides the framework and tools to achieve the goal of making Ontario workplaces safe for workers by setting out the rights and duties of all parties in the workplace, and establishing procedures for dealing with workplace hazards, while providing enforcement mechanisms where compliance is not achieved. Almost every worker, supervisor, employer and workplace in Ontario is covered by the OHSA, in addition to workplace owners, constructors, and suppliers of equipment or materials. In 1996, it was estimated that about 33.8% of the entire Canadian labour force was protected under this Act.



WHO IS RESPONSIBLE?

Based on the interpretation of the Act and the broad definition of “employer”, BOTH the TWA and the CLIENT EMPLOYER are responsible for workplace health and safety and can be charged with the SAME OFFENCE under both the OHSA and the Canadian Criminal Code.

Furthermore, because anyone who directs the work of others or has control over the workplace has a duty, supervisors and other workplace parties can also be held accountable.

Section 1 of the OHSA defines employer as a “person who employs one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services”

Although it is sometimes unclear who is the employer of TWA workers under other labour and employment legislation, under the OHSA, both the client employer and the agency can be considered an employer. Despite the statute not explicitly referring to TWAs, the Act is given a broad and purposive interpretation, so that both parties can be deemed employers that have duties under the Act and can be held accountable for the health and safety of TWA workers. This intention is expressed both by the Ontario legislature and decision-makers. Further, neither employer can contract out their liability under the Act.

Who is the employer?

Duties of Employers

Typically, the employer bears the main responsibility for ensuring compliance with the Act in the workplace. It is the employer who bears this responsibility because the employer is in the best position to enforce compliance with the rules and regulations under the OHSA.

The general duties of employers are outlined in sections 25 and 26 of the Act. Employers also have a range of “prescribed” obligations, which create specific duties. Additionally, employers have duties under the OHSA, to not only workers, but to the public at large.



ENFORCEMENT:

The Act itself sets out various provisions that stipulate the manner in which the provisions are to be enforced in the workplace. By doing so, it effectively creates an internal responsibility system. However, if this internal responsibility system fails to adequately address the health and safety issues in a workplace, the MOL has the authority to enforce laws.

The MOL does this through occupational health and safety inspectors, who have broad powers to inspect any workplace, investigate any potential hazardous situation and work refusal, order compliance with the Act and regulations, and to initiate prosecution under the Act. These broad powers are granted to inspectors pursuant to section 54 of the Act.