

Your Employment Standards Rights – Temporary Help Agency Assignment Employees

Disclaimer: This resource 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 resource 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.

This information sheet gives a summary of the Employment Standards Act, 2000 (ESA) rights for assignment employees of temporary help agencies. The ESA is a law that sets minimum standards in most Ontario workplaces, such as the minimum wage, limits on hours of work, overtime pay, vacations, and job-protected leaves from work for certain reasons. Special rules and exemptions may apply depending on what kind of work you do. For more information visit Ontario.ca/ESAguide.

Assignment employees of a temporary help agency

You are an assignment employee of a temporary help agency if you and the agency have agreed that it will place or try to place you on temporary work assignments with a client business (or client businesses) of the agency. You have an employment relationship with the agency even when you are not on an assignment with a client business of the agency.

Right to public holidays and public holiday pay

Ontario has nine public holidays. Generally, if you are on an assignment and the public holiday falls on a day when you would ordinarily be working, you have a right to take the public holiday off work and to be paid public holiday pay for that day. Public holiday pay is generally your gross regular wages earned plus vacation pay payable in the four work weeks before the work week that

includes the public holiday, divided by 20. A different calculation applies for public holidays between January 1, 2018 and June 30, 2018.

If you agree in writing, including electronically, to work on the holiday, you then have the right to public holiday pay plus premium pay (at least one and one-half times your regular rate of pay), or your regular rate of pay plus a substitute day off with public holiday pay.

For further information on public holidays, please see the “Temporary Help Agencies” chapter in *Your Guide to the Employment Standards Act*, available at Ontario.ca/ESAguide.

Right to notice of termination and severance pay

If you have been employed by a temporary help agency for at least three months, you generally have a right to receive notice of termination if the agency ends (terminates) your employment relationship. You may get notice while you are working, pay instead of working notice, or a combination of both. Generally, the minimum notice you must get ranges from one week (if you have been employed for at least three months but less than one year) to eight weeks (if you have been employed for eight years or more). Your notice entitlement is determined by how long you are employed by the agency, not the length of time you have been working on assignments at the agency’s client business(es).

Different rules apply to a mass termination when 50 or more assignment employees are terminated within the same four-week period.

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 (severs) your employment.

For further information on notice of termination, mass termination and severance pay, please see the “Temporary Help Agencies” chapter in *Your Guide to the Employment Standards Act*, available at Ontario.ca/ESAguide.

Right to notice of termination of assignment

Termination of assignment – which differs from termination of employment – occurs when an assignment employee has his/her assignment with a client terminated, yet remains employed with the temporary help agency.

Generally, a temporary help agency is required to provide an assignment employee with **either one week’s written notice of termination of assignment, termination of assignment pay or a combination of both if:**

1. the assignment employee is assigned to perform work for a client;
2. the assignment had an estimated term of three months or more at the time it was offered to the employee; and
3. the assignment is terminated before the end of its term.

For further information on termination of assignment, please see the “Temporary Help Agencies” chapter in *Your Guide to the Employment Standards Act*, available at Ontario.ca/ESAguide.

An agency cannot charge you certain fees

An agency cannot charge you a fee for being its employee or for helping you find an assignment. It cannot charge you a fee for giving you information or advice on how to write a resume or prepare for an interview, even when the information or advice was provided at your request.

If a client business of an agency wants to give you a job reference or hire you to be its employee

An agency cannot prevent a client business from giving you a job reference.

An agency cannot prevent its client business from hiring you directly if the client business wants to do so. If the agency places you on an assignment with a client business, it can charge the client business a fee for hiring you, but only in the six-month period beginning on the day you first started working for the client business.

If a client business of an agency wants to hire you to be its employee, an agency cannot tell you that you cannot take the job. An agency cannot charge you a fee if a client business wants to hire you.

Information must be provided about the agency

The agency must give you the agency’s legal name and contact information. This information must be provided, in writing, as soon as possible after you become an assignment employee.

Information must be provided about assignments

When the agency offers you an assignment with one of its client businesses, it must give you the client business’ legal name and contact information; the wage rate and benefits (if any); the hours of work; a general description of the work; the estimated term of the assignment (if known); and the pay period and pay day. If the agency gives you this information, but does not provide it in writing when the offer is made, the agency must provide it in writing as soon as possible.

Information must be provided about the ESA

The agency is required to provide you with a copy of this information sheet as soon as possible after you become an assignment employee.

If your first language is not English, the agency must find out if the information sheet is available in your first language, and if so, the agency must supply both the English version and the translated document to you. Multilingual resources are available at Ontario.ca/employmentrights.

The agency must also provide you with a copy of the Employment Standards Poster published by the Ministry of Labour within 30 days of the date you become an employee.

If you request a copy of the poster in a language other than English and the ministry has published a version in that language, the agency must provide the translated version in addition to the English copy. The poster is available at Ontario.ca/ESAposter.

You cannot be punished for asking about or exercising your ESA rights

If you ask about your rights under the ESA or ask that you be given your rights, the agency or the client business cannot punish you in any way, including by ending your assignment. You also have the right not to be punished by your agency or by the client for asking about or exercising your ESA rights.

The agency and client business must keep records

An agency must record the number of hours an assignment employee worked for each client in each day and each week. The client(s) must also record the number of hours the assignment employee worked for them in each day and each week.

The agency and client may both be liable for your wages

If you perform work for a client business or client businesses and the agency fails to pay you some or all of the wages owed for that pay period, the client business(es) may be jointly and severally liable for some or all of those unpaid wages. Specifically, client businesses may be held liable for unpaid regular wages, overtime pay, public holiday pay and public holiday premium pay. If more than one client business is liable in a pay period, each client business is jointly and severally liable with the agency for a share of the total wages owed in proportion to the hours worked for that client business.

If you have a question or want to file a claim

If you have questions about the ESA call the Ministry of Labour's Employment Standards Information Centre at 416-326-7160, toll free at 1-800-531-5551, or TTY 1-866-567-8893. Information is available in multiple languages.

To file a claim, you can access the Employment Standards Claim Form online at Ontario.ca/ESAforms.