



ARE YOU A TEMP AGENCY WORKER?

Know your rights

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.

PROTECTIONS FOR TEMP AGENCY WORKERS

IS YOUR AGENCY FOLLOWING THE LAW?

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

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. Only job recruiters or “head-hunters” can 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, the agency must also 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 qualify for severance pay if the agency ends your employment. To qualify, 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 months after you are assigned to 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 reprisal. The client company (where you work every day) can also be held responsible if you are penalized for trying to enforce your rights.

TEMP AGENCY WORKERS ARE ENTITLED TO PUBLIC HOLIDAY PAY.

IT'S THE LAW!

NEW YEAR'S DAY

FAMILY DAY

GOOD FRIDAY

VICTORIA DAY

CANADA DAY

THANKSGIVING

LABOUR DAY

BOXING DAY

CHRISTMAS

KNOW YOUR RIGHTS – HOLIDAYS

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

Since January 2nd, 2009, the law clearly states that temp agency workers have the right to public holidays. 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 full-time workers this is about a day's pay. For part-time workers it would be less. This can equal 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:

1. Be paid premium pay (1.5 X hourly rate **AND** public holiday pay) **OR**
2. Work on the public holiday at your regular rate of pay **AND** take another day off with public holiday pay instead.

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

Since 2009, the law clearly states workers who are "elect to work" are eligible to public holiday. 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 S.W.E.A.C to find out what steps to take and how you can calculate you public holiday pay.

Do I Qualify for Public Holiday Pay?

Anita 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 she has to work for the agency for three months before she qualifies for holiday pay. **THIS IS ILLEGAL!** You must only work your regular scheduled shift before and after the holiday in order for the agency to calculate your holiday pay. It may equal out to \$0, but the calculation should be carried out. Anita wrote down the details of what her agency told her and contacted the Sudbury Workers Education and Advocacy Centre for more information on her rights. Now that she knows she is owed wages, she can decide which steps to take next.

PROTECT YOURSELF

- Keep records of all dates and hours you work. 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 risks if you are still working at the agency.
- The Ministry of Labour website has a public holiday pay calculator to assist you.
- File a complaint with the Ministry of Labour.
- Call S.W.E.A.C to find out what to do when you discover that an agency is violating the law.

Human Rights and Temp Agency Workers

It is legal for a temp agency to decide who they will send to each assignment or job. However, this decision cannot be based on the grounds listed under the Human Rights Code.

The Human Rights Code prohibits workplace discrimination and harassment based on the following grounds: age, creed, disability, family and marital status, gender identity and gender expression, race and related grounds, receipt of public assistance (housing only), record of offences (once convictions are pardon), sex, and sexual orientation.

It's illegal for a temp agency to ask for your Social Insurance Number (SIN), passport, date of birth or country of origin before they offer 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 you file a complaint.

Workers' Win! Equal Rights for Temp Workers

As of November 20th, 2015 client companies (the place you work at daily) will be jointly liable for any wages, overtime or public holiday pay that the temp agency fails to pay you. It is first the agency's responsibility to pay you, but if they do not, you can then seek unpaid wages from the client company.

This is an important win as many workers have trouble enforcing their rights when a temp agency fails to pay them because they work at the client company who does not want to deal with issues of unpaid wages. Now, when a claim is filed at the Ministry of Labour, both the agency and client company can be named and ordered to pay unpaid wages.



The Sudbury Workers Education and Advocacy Centre

For information on your rights and to make a plan.

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Ministry of Labour

Human Rights Legal Support Centre

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

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