Temporary help agency licensing: What healthcare facilities (and other employers) need to know

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Starting on July 1, 2024, amendments to the *Employment Standards Act, 2000* (ESA) mean that temporary help agencies (THAs) and recruiters will be required to hold licences (or to have applied for a license and not yet received a decision) in order to continue operating.

Many healthcare facilities currently leverage THAs to staff their facilities on a temporary or casual basis, and in particular, there has been an upward trend in engaging agency nurses to address short-staffing when needed. The new licensing regime calls for extra care and consideration from healthcare facilities to ensure compliance and avoid penalties when contracting with THAs and recruiters for their services.

New obligations as a client of THAs

A “client” of a THA is defined as “a person or entity that enters into an arrangement with the agency under which the agency agrees to assign or attempt to assign one or more of its assignment employees to perform work for the person or entity on a temporary basis”. A similar definition applies for clients of recruiters.

Clients of THAs have certain obligations, most notably that clients must only work with THAs and recruiters that have licenses. Employers found to knowingly engage or use the services of an unlicensed THA or recruiter will be found to have violated the ESA, subjecting them to penalties under the statute.

Other obligations of THA clients include record-keeping, sharing policies and information with assignment employees, anti-reprisal protections, and joint and several liability for assignment employees’ unpaid wages. THA clients also participate in investigation and enforcement matters with the Ministry of Labour’s Employment Standards Officers.

Suggested steps for healthcare facilities and employer THA clients

Healthcare facilities and other employers that use THAs should take proactive measures to review their arrangements and prepare for the licensing scheme to come into force.

- **Review arrangements**: Assess existing relationships with contractors to determine whether the ESA definitions of THAs, clients, and assignment employee are met and whether corresponding obligations are triggered.
- **Contractual terms:** Consider drafting contracts with THAs to contain express covenants that the THA has and will maintain in good standing all necessary licences. Check the public record to ascertain the licensing status of a THA.
- **THA and client obligations:** Ensure that all licensing and substantive obligations of THAs and clients are met, such as record-keeping, assignment termination notice, and restrictions against certain actions such as charging referral fees.
- **Due diligence and enforcement:** In addition to covenants, consider obtaining a copy of the THA or recruiter's license, prior to engagement and throughout the term as may be applicable.
- **Go-forward monitoring:** Establish a protocol to ensure ongoing monitoring and due diligence to support compliance with the ESA's new requirements for THAs and clients.

Note that clients may legally continue to engage with THAs and recruiters who have (1) been refused a licence, (2) been refused a renewal of a licence, (3) received a notice of suspension, or (4) received a notice of revocation, for just 30 days after these notices have been provided. After that, clients must consider the best way to move forward in order to remain compliant with the ESA requirements.

Be sure to seek legal counsel on navigating these new changes prior to July 1, 2024. The ESA provides Employment Standards Officers with great discretion in making orders and penalties, and the consequences can be significant if issues surrounding THAs are not handled with care and diligence. Seeking early advice helps to ensure that your facility will have the appropriate systems and documentation in place for a smooth transition.

Further information

Additional guidance from the Ontario government with respect to THA licensing and applications can be found here. If any questions arise, please feel free to contact the key contacts below or your regular BLG lawyer.

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