Ontario’s Employment Standards Act: New licensing requirements for temporary help agencies and recruiters

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Jan 1, 2024: THAs and recruiters that have submitted their applications by Dec. 31, 2023, are allowed to continue operating until a formal decision is issued on their application. An employer knowingly using an unlicensed THA or recruiter will be found to have violated the ESA.

Update: On November 10, 2023, the Ontario government extended this deadline to July 1, 2024.

The Ontario government passed Bill 27, *Working for Workers Act*, 2021, on Dec. 2, 2021, which amended the *Employment Standards Act*, 2000 (ESA), to create a new licensing regime for temporary help agencies (THAs) and recruiters in Ontario.

What’s changed with the new ESA amendments?

Some of the amendments to the new licensing regime for THAs and recruiters were proclaimed into force in July of this year. Other amendments will be proclaimed into force on Jan. 1, 2024.

The two relevant amendment proclamation dates and associated requirements are as follows:

- **July 1, 2023:** The amendments to the ESA licensing regime take effect. THAs and recruiters can begin their licensing applications. The amendments explain how to apply for a license, identify the circumstances under which a license will not be granted, discuss license renewal procedures, clarify penalties for non-compliance and more.
- **Jan 1, 2024:** THAs and recruiters that have submitted their applications by Dec. 31, 2023, are allowed to continue operating until a formal decision is issued on their application. An employer knowingly using an unlicensed THA or recruiter will be found to have violated the ESA.
    - **Update:** On Nov 10, 2023, the Ontario government extended this deadline to July 1, 2024.

What applicants qualify as a THA and recruiter?

The ESA and its regulations define to whom the new licensing requirements apply:

- **THA** – "an employer that employs persons for the purpose of assigning them to perform work on a temporary basis for clients of the employer."
- **Recruiter –** "any person who, for a fee, finds, or attempts to find, employment in Ontario for prospective employees" or "any person who, for a fee, finds, or attempts to find, employees for prospective employers in Ontario."

The ESA and its regulations list multiple exceptions regarding who qualifies as a THA or a recruiter. Some exceptions to the definition include education entities (e.g., school boards), trade unions and registered charities.

What are the key components for the licensing application for THA's and recruiters?

The core components of the licensing requirements for applicants are:

A) Timelines

- An applicant must complete and submit their application by Dec. 31, 2023. The application is submitted online through the Ministry of Labour (the Ministry) website.

B) Application requirements

The applicant must provide their basic contact and business information to the Ministry including the:

- Operating/business name if different than the applicant's legal name.
- Address of every location their business is carried out.
- Business address, email address, and telephone number of the applicant.

Other important licensing requirements require the applicant disclose whether the applicant has:

- Been issued an order under the ESA and if so, whether they have complied.
- Been issued an order under the *Occupational Health and Safety Act, 1990*, and if so, whether they have complied.
- Met the necessary requirements under various sections of the Workplace Safety and Insurance Board.
- Been refused a license or has ever been refused a license to operate as a recruiter/in a similar capacity in another Canadian jurisdiction.
- Verified their compliance status with the Ministry of Finance's tax compliance verification tools.

The licensing requirements requires the applicant to meet the following financial requirements:

- Pay $750 when submitting the application.
- Provide an electronic irrevocable letter of credit in the amount of $25,000. The government of Ontario recommends using their template when having the irrevocable letter of credit drafted. The irrevocable letter of credit must:
    - Be made to the Director of Employment Standards.
    - Be issued by a bank in Canada or a credit union.
    - Automatically renew when it expires.
    - Permit partial drawings without any conditions.
    - Have no other conditions attached to it.

Why are the amendments to the ESA relevant to employers?

Employers must ensure that the THAs and recruiters that they use are licensed. 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. Employers should ensure the service providers that they work with are complying with the new licensing requirements.

For more information about how these amendments could impact your current recruitment and hiring processes, please reach out to the contacts below from our Labour and Employment Group.

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