

## **New Licensing Process for Temporary Help Agencies and Recruiters in Ontario Take Effect July 1, 2023 and January 1, 2024**

June 27, 2023

Effective **January 1, 2024**, a temporary help agency (“THA”) or recruiter operating in Ontario must have a licence, or have submitted a license application, to operate. Similarly, a client of a THA or any employer or prospective employee cannot knowingly use an unlicensed THA or recruiter. Failure to comply will be a violation of the Ontario *Employment Standards Act, 2000* (“ESA”).

The new licensing process for THAs and recruiters under the *ESA* takes effect as of **July 1, 2023**.

This briefing note provides an overview of the changes.

### **THA and Recruiter Definitions**

The *ESA* defines a THA as “an employer that employs persons for the purpose of assigning them to perform work on a temporary basis for clients of the employer.”

The term “recruiter” had not previously been defined under the *ESA* but is now captured in [O.Reg. 99/23](#) (Licensing – Temporary Help Agencies and Recruiters) (the “Regulation”). A “recruiter” is (1) any person who, for a fee, finds, or attempts to find employment in Ontario for prospective employees, or (2) any person who, for a fee, finds or attempts to find employees for prospective employers in Ontario.

There are several exemptions from this definition as set out in the Regulation, including any individual or entity that recruits for their own benefit or the benefit of their employer. For example, a human resources manager who recruits employees for their own employer is not a “recruiter” under the Regulation.

### **The Licencing Process**

To be licensed, a recruiter or THA must (1) complete the necessary application form, (2) pay a \$750 fee and (3) provide a \$25,000 security payment.

#### *The Application Form*

The application form is not yet publicly available. Once released, we will inform our readers and provide a link.

The form may be submitted electronically or in writing and requires certain prescribed information including contact information for the applicant and its directors and officers, and information about each location at which the applicant carries on business, worldwide.

In addition, the applicant must confirm (1) it has not charged a fee to a foreign national for any service good or benefit connected to their actual or potential employment in Canada contrary to the *Employment Protection for Foreign Nationals Act* (“*EPFNA*”), and (2) it understands the potential penalties associated with this infraction. The applicant must also advise, among other things, if it:

- Has been issued an order under the *ESA*, the *EPFNA*, or *Occupational Health and Safety Act* and, if so, whether it has complied with such order
- Has ever taken possession of or retained a passport or a work permit of a foreign national in contravention of the *EPFNA*
- Is registered with the Workplace Safety and Insurance Board, as required, and, if so, has complied with the registration and information requirements and payment obligations under the *Workplace Safety and Insurance Act*.

An applicant must also provide a statement confirming it has verified its tax compliance status with the Ministry of Finance (with proof of same) and it is not in default of filing a tax return or of paying any tax, penalty or interest for which payment arrangements have not been made.

If the applicant uses any person, other than an employee of the applicant, in connection with recruitment or employment of foreign nationals, it must provide contact information for the person and confirmation it has taken steps to verify the person does not charge or collect fees from a foreign national in contravention of the *EPFNA*.

#### *The Fee*

An applicant must pay \$750 per application.

#### *The Security*

An applicant must provide a \$25,000 security per application in the form of an electronic irrevocable letter of credit that (1) has a provision for automatic renewal following the expiry date, (2) permits partial draws without any conditions, and (3) is issued by a prescribed bank or credit union.

The security may be used to satisfy amounts owing under certain sections of the *ESA* or *EPFNA*, and the Regulation details the process of when and how the Director of Employment Standards (the “Director”) may use the security.

#### **Expiry of a Licence**

A licence expires one year after the date the Director or renews it. If an applicant applies for renewal before the licence expires, the licence remains valid until the Director renews it or serves notice of refusal.

## **Refusal to Issue or Renew a License**

The Director has broad power to refuse to issue or renew a license, or revoke or suspend a license issued. This includes when the applicant or licensee:

- Has not complied with an order issued under the *ESA* or *EPFNA*
- Has charged a fee to a foreign national, or used the services of any person that has charged or collected such a fee in contravention of the *EPFNA*
- Has taken possession of or retained a passport or a work permit of a foreign national in contravention of the *EPFNA*
- Is not registered with the Workplace Safety and Insurance Board, as required, or has not complied with the registration and information requirements and payment obligations under the *Workplace Safety and Insurance Act*
- Is in default of filing a tax return or of paying any tax, penalty or interest for which payment arrangements have not been made.

A THA or recruiter that has its license refused, revoked, or suspended must notify its clients and assignment employees within 30 days of receiving notice. A decision to refuse an application or to revoke or suspend a license may be reviewed on application to the Ontario Labour Relations Board.

An applicant who is refused a license or renewal of a license, or has had their license revoked, may not apply for a new license unless at least two years have passed since the refusal or revocation, or the applicant satisfies the Director there is new evidence available.

## **Record Keeping**

### *THA Clients*

Effective July 1, 2023, a THA client must record the name of each assignment employee and their daily and weekly hours of work (previously, there was no obligation to record an assignment employee's name). These records must be kept for three years from the day or week worked.

### *Recruiters*

A recruiter must record the name of each prospective employee who uses the recruiter and the address of each employer or prospective employer who has engaged the recruiter. These records must be kept for three years from the date the recruiter ceased providing service to the individual or entity.

## Information Available to the Public

Licensing information will be made available to the public so a client-employer can confirm that a THA or recruiter is licensed. If a THA or recruiter has its license revoked or suspended this information will also be published.

## Penalties

It is a violation of the *ESA* to provide false or misleading information in a license application. An applicant who does so will be subject to a \$15,000 fine, which increases to \$25,000 on a second contravention in a three-year period, and \$50,000 on a third or subsequent contravention in a three-year period.

For more information about the new licensing regime and how it may impact your organization, contact your Sherrard Kuzz LLP lawyer or [info@sherrardkuzz.com](mailto:info@sherrardkuzz.com).

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