

FTR Now

ESA Provisions Imposing Shared Liability for Temporary Help Agencies and Their Clients Coming into Force

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On November 20, 2015, amendments to the *Employment Standards Act, 2000* (“ESA”) which affect Ontario’s temporary help industry and its clients will come into force. The amendments were contained in Bill 18, *Stronger Workplaces for a Stronger Economy Act, 2014*, which we previously discussed in our *FTR Now* of July 21, 2014, [Ontario Reintroduces Legislation Amending Workplace Laws](#).

In this *FTR Now*, we provide a brief overview of the new provisions regarding temporary help agencies.

SHARED LIABILITY

Where a temporary help agency (“Agency”) supplies the services of an assignment employee to a client (“Client”), the new provisions impose joint and several liability on the Agency and the Client for the regular wages, overtime pay, public holiday pay and premium pay earned by the assignment employee during each pay period that the employee supplied services to the Client of the Agency.

Where an assignment employee works for one or more Clients during the relevant pay period and the Agency fails to pay the employee, each Client is jointly and severally liable with the Agency for a share of the total wages owed to the employee, on a proportionate basis.

Because liability will be “joint and several”, this means that the Agency and the Client not only share liability for the full amounts owing, each of the Agency and the Client could be liable to pay the entire amount. The new ESA provisions make it clear that the primary responsibility will rest with the Agency. However, a claim against the Client can proceed before the proceedings against the Agency are exhausted. For the purposes of enforcement, the ESA will deem the Client to be the employer of the assignment employee.

RECORD KEEPING

Amendments to the ESA will now require that both the Agency and the Client maintain records of the hours worked by each assignment employee in each day and each week. Those records must

be retained for three years.

CONCLUSION

With joint and several liability coming into effect shortly, Clients will want to undertake proper due diligence when engaging an Agency to be satisfied that assignment employees will be paid by the Agency. Further, Clients and Agencies may want to revisit the terms of their commercial arrangements in order to include terms that address this new joint liability.

Should you have any questions about how these amendments will impact your workplace, please contact [Kathryn L. Meehan](#) at 519.883.3120 or your regular [Hicks Morley lawyer](#).

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