



Temporary Help Agencies and Recruiters Licensing Framework Consultations

**Written Submission from World Education Services (WES)
December 6, 2022**

World Education Services (WES) is a non-profit social enterprise dedicated to helping international students, immigrants, and refugees achieve their educational and career goals in Canada and the United States. For more than 45 years, WES has set the standard of excellence in the field of international academic credential evaluation. Through WES Global Talent Bridge, the organization joins with institutional partners, community-based organizations, and policy makers to help immigrants and refugees who hold international credentials fully utilize their talents and education to achieve their academic and professional goals. The organization's philanthropic arm, the WES Mariam Assefa Fund, supports catalytic leaders and organizations working to build inclusive economies and to ensure that immigrants and refugees can achieve their aspirations and thrive. Since 2013, WES has been a designated provider of Educational Credential Assessments (ECAs) for Immigration, Refugees and Citizenship Canada.

Thank you for the opportunity to provide inputs to the proposed licensing framework for help agencies and recruiters in the temporary help sector to improve compliance with the Employment Standards Act, 2000.

Should you have any questions, kindly contact any of the WES staff noted below.

Shamira Madhany
Managing Director, WES Canada
smadhany@wes.org

Guliz Akkaymak
Manager, Policy and Advocacy
gakkaymak@wes.org

Consultation Questions and Stakeholder Comments

*NOTE: The language requesting stakeholder input has been copied verbatim from the consultation paper entitled “**IMPROVING COMPLIANCE WITH THE EMPLOYMENT STANDARDS ACT, 2000 IN THE TEMPORARY HELP SECTOR**”. The responses have been drafted by World Education Services (WES).*

A. Definition of “recruiter”

It is proposed that the term “recruiter” would be defined to include any person who, for a fee, finds or attempts to find, employment in Ontario for prospective employees. It would also include any person who, for a fee, finds or attempts to find, employees for prospective employers in Ontario.

1. What are your views on this proposed approach to the definition of recruiter?
2. Should there be a specific exemption for individuals performing recruitment functions as part of their role in an organization or could such an exemption create an unintended loophole?
3. Should there be a specific exemption for individuals performing recruitment functions under a provincial program (e.g., Employment Ontario, Ontario Works, etc.)?
4. Are there any other scenarios where other exemptions would be required?

Comments from World Education Services (WES)

Over the past four decades, there have been major transformations in labour recruitment with increased involvement of the private sector in this field. This transformation has occurred without consistent use of tools for comprehensive compliance, monitoring, enforcement or deterrence – tools which would help to ensure workers’ rights and employment standards are consistently respected. The situation has had a profound effect on wages and working conditions. It has also increased workers’ vulnerability to exploitation: There have been numerous documented cases of **recruiters and employers violating the employment standards**. Workers face **numerous forms of exploitation**, including unpaid wages, unpaid overtime, and excessive work hours.

It is a **common practice for recruiters to work with sub-recruiters**, which usually makes the recruitment business even more complex and contributes to precarious employment in many industries in Ontario. Through these complex business relationships, “main” recruiters can transfer responsibility for the workers who perform the work of concern to smaller intermediary firms. **Migrant workers, newcomers, youth, and women** are most affected by these complexities and insecurities.

The triangular employment relationship and recruiter supply chains contribute to persistent non-compliance. This exacerbates impact on migrant workers and newcomers, who are unfamiliar with the systems and do not know who to hold accountable. A recruiter licence should be an individual licence that applies only to the applicant for licensure. A single license must not cover all recruiters working with an agency or recruiting business. Rather, individuals who work as subcontractors for

recruitment agencies must also carry annually renewable licences. In other words, each person carrying out recruitment activities must be required to obtain a recruiter licence to do this work.

As in other jurisdictions (e.g., Nova Scotia and Manitoba), individuals applying for a recruiter licence to engage in migrant worker recruitment in Ontario should be a member in good standing of the Law Society of Ontario; a bar of another province or the Chambre des notaires du Québec; or of the Immigration Consultants of Canada Regulatory Council. The Director of Employment Standards should share and verify information with these bodies.

In addition to a recruiter licensing system, there should be an employer licensing system. Employers can be educated about legal responsibilities of hiring migrant workers and of contracting recruiters. Such a system will also enable the ministry to develop and maintain a database of licensed employers and to conduct targeted proactive inspections to better ensure compliance.

Recommendations

- Expand the definition of the term “recruiter” by including sub-recruiters who assist another person in finding or attempting to find employment in Ontario for prospective employees
- Require each person carrying out recruitment activities to obtain an annual licence
- Limit eligibility to engage in migrant worker recruitment to members in good standing of the Law Society of Ontario; a bar of another province or the Chambre des notaires du Québec; of or the Immigration Consultants of Canada Regulatory Council
- Exempt the following groups from obtaining a licence: an agency of the government or a municipality, and a person who recruits employees for their employer only
- Introduce an employer licensing system

B. Application fee amount

It is proposed that a Temporary Help Agency (THA) or recruiter applying to the Director of Employment Standards (DES) for a licence, or a renewal of a licence, would be required to pay a \$750 fee.

5. What are your views on this proposed application fee amount?

Comments from WES

\$750 annual licence fee is reasonable and within the range of licensing fees in the province.

C. Security (the amount, form, and purposes for which it may be ‘drawn down’ by the ministry)

It is proposed that a THA or recruiter applying to the DES for a licence, or a renewal of a licence, would be required to provide a \$25,000 security in the form of an irrevocable letter of credit.

Depending on the circumstances, the security could be used or “drawn down” by MLITSD to satisfy obligations owing under orders, for example:

- an order to recover fees, to pay wages or compensation under the ESA; or
- an order to repay fees, repay costs or to pay compensation under the *Employment Protection for Foreign Nationals Act, 2009*.

If the security is used for these purposes, there would be a requirement that the security be topped back up to \$25,000 within 30 days of receiving notice from the DES that the security was used.

The security would be returned if a licence expires or is cancelled, revoked, or suspended (it could be held by the DES for up to six months after expiry, cancellation, revocation, or suspension of a licence, but could be longer if a complaint is filed in case the monies are needed to pay the complainant).

6. What are your views on this proposed requirement to provide a security of \$25,000, the form and purposes for which it may be ‘drawn down’ by the ministry?

Comments from WES

Unpaid wages are serious legal issues temporary agency workers face in Ontario. Recent enforcement campaign demonstrated that temporary agency workers in retirement homes, farms, food processing plants and warehouses were owed **\$3.3 million unpaid wages**. Requirement of a security deposit – to be automatically drawn down to cover fines for violations – provides an incentive for THAs and recruiters to comply with labour laws. Such deposits are a common licensing requirement in most jurisdictions (e.g., Saskatchewan and Manitoba). Security deposits should be a condition of licensing for a THA or recruiter in Ontario. The amount of the security deposit should be no less than \$25,000.

Additional measures are also needed to ensure workers are able to advocate for themselves. The current situation is troubling. The vast majority of workers who experience egregious **violations of employment standards**, including unpaid wages, are the least likely to assert their rights with either the client company, the THA, or the recruiter. Employee vulnerability to reprisal; lengthy and complex complaint processes; and language barriers are among the **major constraints on the exercise of employee voice**. Ontario has the opportunity to develop **measures**, common elsewhere but currently missing in this province, to mitigate the risk of reprisal and increase the accessibility of claim process to vulnerable temporary workers. To adjust, Ontario must – like other jurisdictions including Saskatchewan and Quebec – create provisions for anonymous or confidential complaints and for complaints filed by third parties. Additional provisions should address issues as fair pay, constraints on employers’ use of temporary workers, and transparent pathways to permanent employment.

Recommendations

- The amount of the security deposit for licensure for any THA or recruiter should be no less than \$25,000.

- In addition to licensure, newcomers in the labour force -- including **immigrants, refugees, and international students** -- need additional protections. We recommend the framework include measures that address the following concerns:
 - Equal pay for equal work: Temporary agency workers should be paid the same as directly hired workers when they do the same work.
 - Limited utilization of temporary agencies: There should be a cap on how much of a company's workforce can be hired through temporary agencies.
 - Pathways to permanent employment: Temporary agency workers must become directly hired permanent workers of the client company after three months of assignment.
 - Improved transparency and fairness: The client company and temporary agency must provide just cause if another temporary agency worker is hired to do the job of a previous temporary agency worker at the end of the assignment.
 - Accessible claim process: Temporary agency workers should be able to file anonymous or confidential complaints; third parties should also be able to file such complaints. Provisions for such complaints should be introduced and the accessibility of the process should be ensured.

D. Opportunity to show evidence of compliance with licensing requirements ("cure period")

It is proposed that regulations would provide for rules specifying time periods to show evidence of compliance in certain circumstances where the DES has given notice of intention to deny, revoke or suspend a licence.

- For applications for new licences or renewals, an applicant would be given notice if there is an intention to refuse to issue or renew a license. Applicants would have 60 days to show evidence of compliance before the licence or renewal is refused.
 - A licensee would be given notice if there is an intention to suspend or revoke a licence. Licensees would have 60 days to show evidence of compliance before the licence is suspended or revoked.
7. What are your views on this proposed approach to the "cure period"?
 8. Do you think that there are any contraventions that should result in the immediate revocation/ suspension of a licence (i.e., there would be no cure period given to licensee)?

Comments from WES

Procedural fairness in administrative decision-making depends on due process and, where possible, adherence to existing standards. The common practice in the procedural fairness field is to provide 30 calendar days to respond to a decision-maker's request.

Recommendations

- Provide applicants for licensure with 30 calendar days to show evidence of compliance before the licence or renewal is refused.
- Provide licensees with 30 calendar days to show evidence of compliance before the licence is suspended or revoked.
- There should be no cure period if a licence has ever charged a fee to a migrant worker in contravention of s. 7(1) of EPFNA or a licence uses the services of any person, other their employee, that has ever charged a fee or collected a fee charged to a migrant worker in contravention of EPFNA.

E. Administrative monetary penalties (notice of contravention amounts)

The government is proposing administrative monetary penalties (i.e., Notices of Contravention) for non-compliant THAs, recruiters and client businesses. The penalties would cover the following contraventions:

- Prohibition against a THA operating without a licence.
- Prohibition against a client using an unlicensed THA.
- Prohibition against a recruiter operating without a licence.
- Prohibition against an employer or prospective employer using an unlicensed recruiter.
- Prohibition against provide false or misleading information.
- Requirement for THAs and recruiters to provide notice that a licence has been refused, revoked, or suspended.

The penalty for a first-time contravention is proposed to be \$15,000. The penalty for a second contravention is proposed to be \$25,000 if it occurs within 3 years of the first contravention. The penalty for a third contravention is proposed to be \$50,000 if it occurs within 3 years of the second contravention. Any additional contraventions that occur in that 3-year period would be \$100,000.

9. What are your views on the proposed administrative monetary penalty approach?

Comments from WES

The proposed contraventions and use of significant fines for violations can be an effective compliance tool if there is commensurate monitoring and enforcement capacity. An increasing penalty scale may help to deter non-compliance.

Despite widespread recognition of the importance of using deterrence measures in enforcement, studies demonstrate a **major gap in employment standards enforcement** between the deterrence measures available to enforcement officials and their actual use. Deterrence tools must be used when recruiters, THAs, employers, or client companies violate regulations. There is a need to strengthen

monitoring, compliance, and enforcement of employment standards in order to ensure that recruiters, THAs, employers, and client companies are held to a high standard of accountability.

Recommendations

- Fines for failing to be licensed or to use licensed THAs or recruiters must be automatic upon confirmation of violation.
- Fines for employers, prospective employers, and client businesses must include the failure to use a licensed recruiter and THAs directly or indirectly.
- An adequate number of labour force inspectors must be in place to monitor the industry, and government must continue to engage in targeted inspections.
- Workers must be able to make anonymous complaints about unlicensed recruiters and THAs. In the event of such complaints by workers, the onus of proof must be on the THA or recruiter to prove that they are licensed in good standing.

F. Issuance of a licence

Under the licensing framework, the DES will issue/renew a licence if the DES receives an application and is satisfied that the applicant has complied with orders issued under the ESA and/or *Employment Protection for Foreign Nationals Act, 2009* (EPFNA) and meets the licensing requirements set out in the ESA and the regulations. The ESA includes a list of requirements as part of the application for a licence or renewal of a licence. In addition, the government is contemplating prescribing other requirements such as:

- providing information about every location the applicant carries on business, including international locations; and
- whether the applicant has previously applied for a licence under a different name.
- The DES can also request that an applicant provide any other information that is relevant to the decision as to whether or not to issue a licence or renewal.

10. What are your views on the proposed approach to the issuance of a licence?

11. Is there any other information that applicants should be required to provide as part of the application?

Comments from WES

The licence should be an individual licence that applies only to the applicant. The office of the Director of Employment Standards (DES) must be given broad powers to investigate the history, financial status, and key business relationships – including supply chain relationships – of agencies and recruiters before licences are awarded.

The licence must not be transferable or assignable, and only the licensee may operate under the licence. In the event of a change in ownership, an application for a new licence must be submitted.

Licenses should renew their licence every year. A public list of licensees must be published on the ministry's website.

Applicants and licensees renewing their licence must be required to complete a mandatory course on labour standards and licence obligations. The course must be administered by a government-appointed educational institute. This requirement is an important lever for increased accountability and the reduction of the tendency toward non-compliance in the industry. **Singapore's approach to licensing recruiters** presents a good example. The Foreign Manpower Management Division within the Ministry of Manpower requires recruiters to take **courses that are roughly 40 hours long** and to then prove their familiarity with the country's employment laws.

An individual applying for a recruiter licence to engage in migrant worker recruitment must be a member in good standing of the Law Society of Ontario; of a bar of another province or of the Chambre des notaires du Québec; or of the Immigration Consultants of Canada Regulatory Council. The office of the Director of Employment Standards must share and verify information with these bodies. This requirement allows for licensees to be held accountable for recruiting violations.

Recommendations

- Ensure the DES has the power to proactively investigate applicants to ensure eligibility for licensure. The investigations should ensure that applicants:
 - have a good record of compliance with national and subnational labour standards
 - demonstrate adequate financial means to operate their business and provide a security deposit
 - disclose supply chain relationships they are part of
 - complete a substantive course on labour standards and license obligations administered by a government appointed educational institute
- Require licensees to participate in an annual renewal process to meet their licensing obligations, update their information, and pay their annual fees.
- Limit eligibility to engage in migrant worker recruitment to members in good standing of the Law Society of Ontario; a bar of another province or the Chambre des notaires du Québec; or the Immigration Consultants of Canada Regulatory Council.
- Require licensees to complete a substantive annual course on labour standards and licence obligations administered by a government appointed educational institute.
- Publish a public list of licensees.

G. Circumstances to deny / revoke / suspend a licence

Under the licensing framework in the ESA, the DES must refuse to issue or renew a licence if:

- the applicant has not complied with an order issued under the ESA or EPFNA;
- the applicant fails to meet the licensing requirements set out in the ESA or the regulations;

- the applicant has ever charged a fee to a foreign national in contravention of s. 7(1) of EPFNA or the applicant uses the services of any person, other than an employee of the applicant, that has ever charged a fee or collected a fee charged to a foreign national in contravention of EPFNA; or
- any other prescribed circumstances exist.

The DES may also refuse to issue or renew a license if the DES has reasonable grounds to believe that:

- based on the conduct of the applicant, or any officers, directors or representatives of the applicant, the applicant will not carry on business with honesty and integrity and in accordance with the law; or
- the applicant has made a false or misleading statement or provided false or misleading information in an application for a licence or a renewal of a licence.

The DES can revoke or suspend a license on any ground in the two lists above on which the DES might have refused to issue or renew the licence.

A temporary help agency or recruiter whose application for a licence is refused or whose licence is revoked or suspended can apply to the Ontario Labour Relations Board to review the decision of the DES. Associated provisions in the ESA governing such applications for review would apply.

12. Are there any other circumstances that must lead to a licence being denied, revoked, or suspended?
13. Are there any other circumstances where a licence may be denied, revoked, or suspended?

Comments from WES

The proposed grounds for a licence being denied, revoked, or suspended represent an important step to address prevalent problems in the sector. The issue of exorbitant recruitment fees is very common, thus of particular importance. For instance, a migrant worker seeking to secure a minimum-wage job in Canada, must often pay between \$4,000-\$10,000 in recruitment fees. As Fay Faraday, a human rights lawyer and professor at Osgoode Hall Law School at York University, wrote in her report, “**Profiting from the Precarious**” (published by the Metcalfe Foundation), this amount of money typically represents “between six months to two years’ earnings in the workers’ home currency and in some cases considerably more.”

Attempts to develop grounds for denying, suspending, or revoking a licence should be coupled with rigorous, proactive inspections. Such inspections should be standard practice in sectors where there is a high reliance on the recruitment industry. The reactive compliance model is not capable of addressing the structural features of a triangular employment relationship that leaves temporary assignment employees with the least power. There is widespread recognition that proactive inspections provide an opportunity to detect and rectify violations for many employees.

Another way to enhance enforcement is to use the deterrence tools when violations are discovered. Such deterrence tools might include publication of a list of applicants whose applications have been denied, of licensees whose licences have been suspended or revoked, and a list of licensees under investigation. The common assumption that employers' non-compliance is usually rooted in ignorance undermines the efficacy of inspections. The assumption neglects power imbalances inherent in workplaces and ignores the related possibility that non-compliance may be an ongoing strategy for cost reduction. A growing body of **research on precarious employment** suggests that ignorance may not be the driving factor behind employers' non-compliance; rather, industry structures and increased competition create enormous pressure for employers to reduce costs, creating incentives to violate existing laws.

Recommendations

- Publish a public list of applicants whose applications have been denied.
- Publish a public list of licensees whose licences have been suspended or revoked and a list of licensees under investigation.
- For effective enforcement, i) allow anonymous complaints, complaints submitted by third parties, and collective completions, ii) use proactive inspections, and iii) impose high-level deterrence measures on non-complainants.