

Employment Update: Ontario Presses Pause on Recruiter and Temp Agency Reforms

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Relief is at Hand

Recruiters and Temporary Help Agencies (“THAs”) in Ontario have become acutely aware in recent months of changes to the [Employment Standards Act, 2000](#) (“ESA”) that were to be effective on January 1, 2024. These changes would impose compulsory provincial licensing for all such businesses, coupled with an expensive obligation, namely the provision of a \$25,000 Letter of Credit (“LoC”) and multiple potentially burdensome reporting and compliance requirements. Some recruiters have been advising us of convoluted application requirements for LoCs from banking institutions and application and maintenance fees of thousands of dollars per year.

To the relief of many in the industry, Ontario’s Minister of Labour, Immigration, Training and Skills Development, David Piccini, has recently circulated correspondence to stakeholders who have expressed concern, announcing that the implementation of this new licensing regime will be delayed until **July 1, 2024**. This fact of this delay is also now reflected on the Ministry’s website, which can be [found here](#).

In his letter, Minister Piccini also states that he has instructed the Ministry to take the opportunity over this six-month extension to consider additional changes to this new framework. Foremost under the changes to be considered will be the LoC, and smaller firms in particular have good reason to breathe a sign of relief. Those firms that have LoC applications underway may wish to suspend the process, pending a future more detailed announcement, and avoid these extra expenses, at least for the time being. There are a number of other changes from the originally-announced framework, which the Minister has indicated to now be under consideration. These include potential changes to the fee requirement for companies who operate as both recruiters and THAs, and the elimination of the LoC requirements entirely for those business operators who do not work with vulnerable people.

But there is Always a “But”

Despite this welcome news, change is still on the horizon in these industries, and the balance of this article should help to provide an overview of what can be expected to be in place by Canada Day.

Who will be Affected?

These changes impact both recruiters and THAs, defined as follows:

Recruiter: Any person who, for a fee, finds, or attempts to find, employment in Ontario for prospective employees or employers. Excluded from the definition, however, are internal recruiters, trade unions, registered charities, and the employees of corporations engaged in these businesses, among others.

THA: An employer that employs persons for the purpose of assigning them to perform work on a temporary basis for clients of the employer.

But the new rules will also impact employers who utilize the services of recruiters or THAs. As of July 1, employers will be prohibited from knowingly engaging or using the services of a recruiter or THA that is operating without a license. Licensees who think ahead will be able to ease their clients’ need to check by publishing their licensing status on their websites and promotional materials. Employers who wish to obtain independent confirmation of licensing status will be able to check any entity’s licensing status using the public database [found here](#).

How to Apply?

The Ontario government has set out several requirements that recruiters and THAs must meet in order to acquire a license, some of which are quite onerous. To start, registrants will require a provincial government “My Ontario Account”, the registration page for this being located [here](#).

1. Application Fee

The application fee is \$750.00 annually. As things now stand, organizations that operate both as a THA and as a recruiter would be required to pay separately for each of these lines of business. Minister Piccini’s announcement does, however, suggest upcoming changes to the fee structure, which may very well eliminate this duplication.

2. Specific Statements

In addition to basic identifying information, applicants will be required to make several very specific declarations and disclosures, most notably:

- Previous enforcement and compliance histories under the *ESA*, the *Employment Protection for Foreign Nationals Act, 2009* (“*EPFNA*”) and the *Occupational Health and Safety Act*;
- Whether the applicant has ever taken possession of or retained a passport or a work permit of a foreign national contrary to the *EPFNA*;
- Proof of tax compliance obligations with the Ministry of Finance;

- History of convictions (if any) under the *Criminal Code* or the *Immigration and Refugee Protection Act*; and
- Registration status under the *Workplace Safety and Insurance Act* and compliance with WSIB requirements (registration being mandatory for THAs but optional for recruiters).

3. The Letter of Credit

It would not appear that the LoC requirement is at all likely to be removed for THAs or recruiters who work with vulnerable workers, such as temporary foreign workers and relatively unskilled labourers, while executive recruiters in particular have cause for optimism. Those who do work with vulnerable workers are very much the focus of the Province's efforts here, and while a six-month delay is no doubt welcome, the reality is that the LoC requirements will almost certainly continue to apply to these operations.

It is, however, currently unclear exactly what the alternatives may be to the required security, and it remains to be seen whether the Ministry will provide any redress for applicants who have already gone to the trouble and expense involved in obtaining an LoC, only to later find out that they were not required to do so.

Businesses that continue to be subject to the requirements will be required to provide an LoC for \$25,000.00 in favour of the Director of Employment Standards (the "Director"). The LoC must be electronic, irrevocable, automatically renew upon expiry, permit unconditional partial withdrawals, and be issued by a prescribed Bank or credit union in Canada.

An LoC can be called upon by the Director for several reasons, primarily relating to the compensation of workers who are found to be owed money as a result of non-compliance with the *ESA* or the *EPFNA*. This may include using the LoC to provide any unpaid wages or other compensation owing pursuant to the order of an Employment Standards Officer.

When do you Need to Apply by?

Recruiters and THAs must apply for a license prior to the new deadline of July 1, 2024. Of course, action should be taken to ensure that all prerequisites of the application are met well in advance. It is important to note that transition rules will be in effect for all applicants who submit their application prior to July 1, 2024, permitting them to continue in business until the licence application has been decided upon.

What are the Penalties for Non-compliance?

Where a recruiter or THA operates without a licence, or an employer knowingly engages an unlicensed operator, the Ministry's Employment Standards Officers have the authority to impose significant financial penalties without requiring a court appearance or trial, ranging from \$15,000 for a first contravention, up to \$50,000 for a third or subsequent episode within a three-year period.

Retention of Records

The new provisions of the ESA also impose a three-year record keeping obligation on recruiters, THAs, and employers who use THAs.

1. Recruiters

Recruiters will be required to record the name of each prospective employee who uses the recruiter and the name and address of each employer or prospective employer who engages or uses the services of the recruiter.

2. THAs and their Client Employers

THAs will be required to record the number of hours worked by each assignment employee for each client of the THA, broken down by day and week, as well as any notice of termination of assignment.

THA client employers must record the name and the number of hours worked by each employee assigned to perform work for them, broken down by day and week.

Takeaways:

1. Given the six-month delay and the uncertainty surrounding other changes to be made, recruiters and THAs may wish to defer LoC applications and keep an eye out for future editions of this newsletter or updates on the [Ministry website](#), always keeping in mind that no obligations have gone away yet, and the July 1 deadline must be met in any event.
2. Employers, recruiters and THAs alike may wish to ensure that any contracts at all likely to continue past July 1, 2024 will terminate on that date unless the service provider provides documentation showing that they are either licenced or have applied for a licence and are thereby entitled to continue to provide services.
3. There is no obligation upon employers requiring such services to ensure that the service provider is licensed. Nonetheless, it would be prudent as July 1 approaches, to verify the entity's status using the Ontario government database.
4. Recruiters and THAs are well advised to advertise directly on their website landing pages that they are licensed (or have applied to be licenced) by the Government of Ontario.

We will, of course, provide updates on this situation as it continues to evolve.

For more information about these changes, or for specifically tailored advice, please reach out to a member of the Blaneys' [Labour and Employment Group](#).

The information contained in this article is intended to provide information and comment, in a general fashion, about recent developments in the law and related practice points of interest. The information and views expressed are not intended to provide legal advice. For specific legal advice, please contact us.