

Recruiter and Temp Agency Update: Relief is at Hand for Some; Just Not Everyone

Date: May 27, 2024

Authors: Tyler Matthews , Jack Siegel

As described in our [last newsletter article on the subject](#) (November, 2023), Ontario recruiters and Temporary Help Agencies (“THAs”) have been awaiting word from the provincial government about what changes it was going to make to the problematic licencing regime that was to be imposed on their industries. The new system had been slated to be in place on January 1, 2024, but as we shared last fall, the Government hit the pause button and announced a new effective date of July 1, 2024.

But then, it retreated into complete silence for nearly six months.

During that time, curious THAs (and their lawyers) who checked in to the Ministry of Labour, Immigration, Training and Skills Development’s web page on the subject were met with an entirely uninformative message saying only that the application process was offline and under maintenance, with no hint of a timeline as to when the anticipated changes might be put into place. All that they were left with were growing anxieties as to when changes might come and whether there would be time to get into compliance before July 1.

An amended [Regulation](#) under the [Employment Standards Act, 2000](#) (“ESA”) was finally released at the end of April, and it has certainly provided a welcome easing of the previously-onerous licencing requirements, albeit with greater benefit for some than for others.

As we noted in our previous article, the original Regulation imposed the expensive and potentially burdensome obligation on applicants to provide a \$25,000 Letter of Credit (“LoC”) as “security”. The LoC requirement was intended to protect vulnerable workers from exploitation through access to remedial funds, undoubtedly in response to the small percentage of THAs and recruiters in Ontario who had implemented unlawful practices in the employment of foreign nationals (people who are neither Canadian citizens nor permanent residents). Unintentionally, though, it also put smaller recruiting firms at risk of going out of business if a LoC could not be obtained.

To the relief of recruiters in Ontario, an amending Regulation was published on April 29, 2024, which removes the LoC requirement under certain reasonable circumstances and provides a new option. In this article, we review the key changes that have now been made.

Perhaps most critically, the July 1 implementation date remains in place. Effective then, it will be illegal to conduct business in Ontario as a THA or recruiter, without either being licenced or having a licencing application filed and pending determination. Access to the revamped application website can be found by logging in [here](#).

For an overview of the application process and licencing requirements for recruiters and THAs, refer to our recent article, which can be found [here](#).

The Security Requirement: Relief for Some, Increased Flexibility for Others

The \$25,000 Security requirement has been eliminated for recruiters to whom EITHER of the following conditions applies:

- a. The licensee will not recruit foreign nationals; or
- b. The licensee will only recruit foreign nationals for positions with wages at or above the “median hourly wage”.

The “median hourly wage” is defined in the Regulation by reference to a wage rate posted from time to time on a [Government of Canada website](#). At the time of writing, that rate is \$28.39. This translates to an annual salary of \$59,051.20 (based on a 40-hour work week).

Of course, that still leaves the THAs and the recruiters who do attract lower wage foreign nationals. What’s in it for them?

The LoC is no Longer the Only Form of “Security”

As some recruiters and THAs, smaller businesses in particular, were finding out before the Government reversed course last fall, LoCs can be both hard to get and expensive. The good news for them is that there is now an alternative. While the Government will continue to accept LoCs, a “surety bond” now is also an acceptable form of security. A surety bond can be provided by any insurance company licenced under the Ontario Insurance Act to write surety and fidelity insurance. A [list of insurance companies](#) licensed in Ontario is maintained by the government, and it is easy enough to check to see if a specific provider is licensed to write such insurance, by clicking on the “+” sign next to the individual provider to see if the terms “surety” and “fidelity” appear next to the “licence class(es)” category. If **both** terms are there, then the provider meets this criterion. The primary requirements for a surety bond so obtained are that it be:

- a. In the amount of \$25,000;
- b. Irrevocable, automatically renew on the expiry date, and unconditionally permit partial drawings;

- c. Made in favour of the Director of Employment Standards; and
- d. Issued by an insurance company licensed under the Insurance Act to write surety and fidelity insurance.

Given how new this is, we recommend sharing Ontario's Surety Bond Template with potential insurers, which can be accessed [here](#).

Takeaways

1. The application deadline for the licence remains July 1, 2024. Particularly for those recruiters and THAs that will need to provide security, attention should be paid to the application sooner rather than later.

2. Recruiters should consider whether their scope of business with respect to foreign nationals should be limited to employment that pays above the median hourly wage. The question to consider is whether revenue produced through the recruiting of foreign nationals makes it worthwhile to assume the administrative and financial burdens of obtaining security.

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' [Employment & Labour 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.