



Perverse regulation incentives and occupational health inequalities for temporary agency workers

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Social policy and health inequalities: An international perspective

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Focus of this presentation

Social policy and health inequalities: the case of occupational health and safety for temporary agency workers

Not a statistical study.

Focus is on **structural incentives** for and the **logic** of behaviour.

Implications for practice when occupational health regulation is not updated or poorly updated



The context

The temporary work agency sector is flourishing

- An increasingly established part of new flexible labour markets. (Luo et al. 2010; Coe et al 2010)
- A \$11.5 billion industry in Canada; 50% of revenue in Ontario (Statistics Canada, Employment Services sector, 2012)

The role of temp work agencies is changing

- Shift from simply filling in for sick or vacationing workers
- Now supplying part of a client's workforce as a medium or long-term strategic alternative to direct employment.
- Some permanent jobs are being converted into temporary agency positions. (Purcell et al. 2004; Connell & Burgess 2002; Hatton 2011)

There is a non-standard 'triangular' employment arrangement

- The agency is generally the worker's 'employer', but not always (Underhill 2010; Hatton 2011)



Temp agency work is risky

Across international jurisdictions, studies show that temporary agency workers are at greater risk of occupational accidents and diseases than permanent workers.

- Netherlands and Germany: Temp agency workers account for 13% of occupational accidents, but comprise only 3% of the jobs. (European Foundation for the Improvement of Living and Working Conditions, 2007)
- Finland: Workplace accident frequency for temp agency workers is on the increase despite a general downward trend in main industries. (Hintikka, 2011)
- USA: Compared with those in standard employment, temp agency workers have higher workers' compensation claim incidence rates (Park & Butler 2001, Smith et al. 2010), longer claim durations (Park & Butler 2001) and double the probability of getting injured in the construction and manufacturing sectors. (Smith et al., 2010)

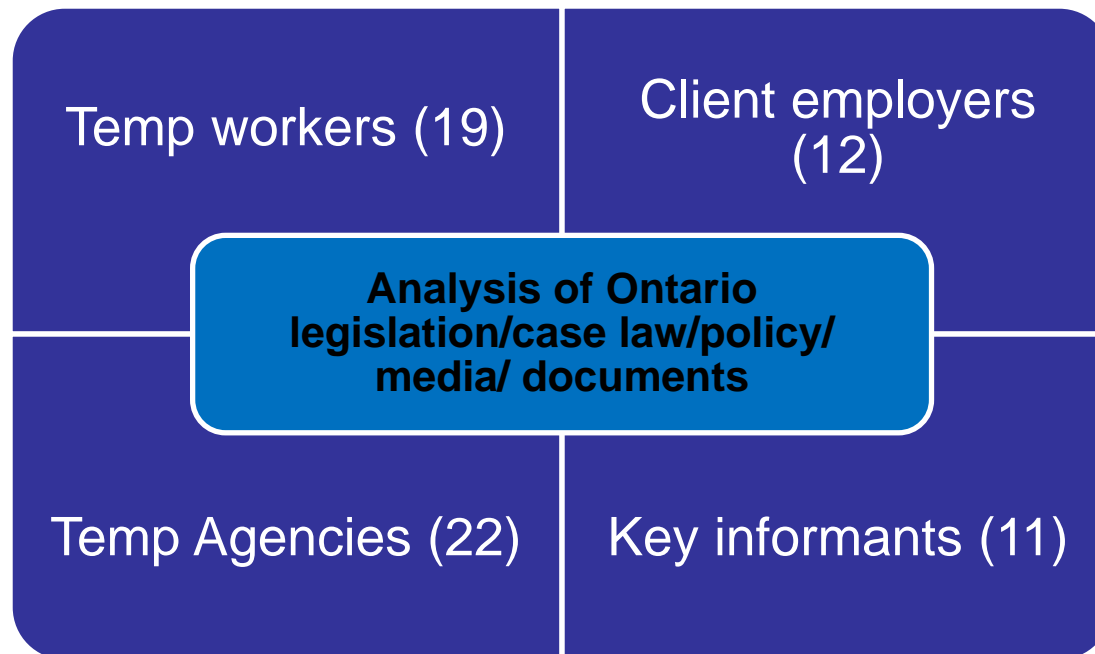
In Ontario, is the trend different? The temp agency sector gets huge 'rebates' on their workers compensation premiums because of exceptionally low reported injury rates.



The study: question and qualitative design

“How are temp agencies organised?.... How they actually ‘do’ injury prevention and return to work? What governance is provided by law and policy?”

64 Interviews/focus groups/document review and discourse/legal analysis:



Purposeful sample:
low skill jobs

Ontario, 2009-2012



Participant Sample

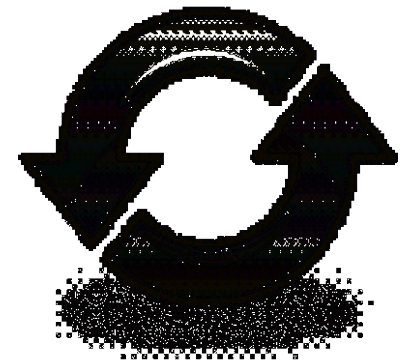
| Participant Category | Industry/Focus | # of Participants |
|---------------------------|---|---|
| Workers | Purposely focused on workers engaged in relatively low skill jobs, such as general labour, warehouse, and service work | 19 |
| Client Employers | Transportation, beverage manufacturing, property management, laboratory, charity, restaurant, waste management, warehouse | 12 (11 workplaces) |
| Temporary Work Agencies | Manufacturing, general labour, forklift operators, special events, warehouse/logistics, clerical | 22 (17 agencies: 6 multinational, 2 mid-sized, 9 small) |
| Key Informants | Workers' compensation and occupational health & safety regulators, workers' compensation policy and legal advisors, safety inspector, industry representatives, worker advocate | 11 |
| TOTAL PARTICIPANTS | | 64 |



Multi-stakeholder Advisory Committee

A multi-stakeholder Advisory Committee provided feedback and guidance at key intervals of the study

- WSIB
- Ministry of Labour
- Office of the Employer Adviser
- Office of the Worker Adviser
- Workers' Action Centre
- Toronto Workers' Health and Safety Legal Clinic
- Workplace Safety & Prevention Services
- United Food and Commercial Workers Union





Findings



1. Client employers hired workers for the relatively dangerous ‘dirty work’

“I’ll hire a couple of guys for a half a day for unloading the container loaded with goods.....And it’s just **heavy duty work that I would rather not have my guys doing.**” (Stephen, site manager, client employer)

“A company in [Ontario] bought this load of lumber...and then they open it up...and they find that the **material was stored unsafely** inside the container. ... So, instead of sending their workers, they got a hold of this **temporary agency**. And they sent two... workers ... and then when the doors were open, when they were handling the material, the load came apart and killed the guy.” (Joseph, OHS inspector)



2. But agencies have little control over their employee's work conditions

"We have a responsibility from an oversight standpoint....but on an ongoing standpoint **we can't manage the workforce**, we don't own the building...the equipment." (Kate, CEO, multinational TWA)

"I am not out with my 140 people that are out working right now and **I can't see** what they're being exposed to today and **I can't tell** you that the person who was hired to put screws in a bag isn't today operating a punch press machine with no guards on it.... The customer told me in good faith that, 'We're going to use these folks to put screws in a bag'.... And, "Oh shit! The guy operating the CNC lathe isn't here today. So Bruno, come over here." (Bruce, owner, local temp Agency)



3. Temp agencies are liable for huge costs for worker injuries

“In the supply of labour industry, the agency supplying and paying the **worker, not the employer to whom the worker is supplied**, is responsible for covering the agency’s workers under the Workplace Safety and Insurance Act.” (WSIB Operational Policy Manual)

Workers’ compensation financial incentives exist to encourage employers to keep workers safe:

Experience-rated premiums: surcharges/rebates





So: Why do temp agencies seem to invite accidents and costs?

Have they managed the risk and made work safe?

No.

- Temp agencies provide workers with basic injury prevention training, but they can't manage worksite process, exposures and risk
- Workers and agencies regularly described special risks being present:
 - Worker newness on the job: “stumbling around” “don’t know where things are”
 - Agency workers get the heavier, ‘dirty’ work
 - Local staff don’t share ‘tricks of the trade’
 - Client employers don’t make safety changes even when agency asks



Four main explanations

I. Agencies want to be accommodating to client employers client risk it is the agency's market

With temp agencies as the sole employer, work accidents don't show on the client employer's worker's experience-rated compensation record.

"We were providing industrial labour... to a client. The client was receiving an [workers' compensation] award for best health and safety practices. That day I had two people...rolled out the back door in the ambulance. **The client kept his health and safety record up high because he outsourced to staffing companies all the risky jobs, all the heaviest lifting.** All the jobs that required any type of **dangerous work** went to a staffing agency. So, his [workers' compensation] record looked...perfect. "(Vaughn, owner, mid-sized temp agency)

This arrangement gives business to temp agencies. It provides an incentive for client employers to hire temp agency workers for the relatively dangerous work. It also hides the injury location.

II. Agencies get a special break when managing work injury costs

a) Temp agencies have a workers' comp rate group financial advantage:

It is cost effective for client employers to outsource the riskiest work to temp agencies.

For most rate groups (except construction, restaurant, trucking) the same accident will cost the agency less than the client employer.

| Ontario Rate Group | Description | 2011 Premium Rate (\$) |
|--------------------|--|------------------------|
| 929 | Supply Of Non-Clerical Labour | 4.83 |
| 033 | Mill Products And Forestry Services | 8.42 |
| 036 | Veneers, Plywood And Wood Preservation | 5.14 |
| 119 | Other Mines | 6.40 |
| 134 | Aggregates | 6.24 |
| 159 | Livestock Farms | 6.78 |
| 312 | Wooden Boxes And Pallets | 6.83 |
| 496 | Concrete Products | 5.19 |
| 689 | Waste Materials Recycling | 5.90 |
| 711 | Roadbuilding And Excavating | 5.06 |
| 719 | Inside Finishing | 7.19 |
| 728 | Roofing | 14.16 |
| 737 | Millwrighting And Welding | 6.60 |
| 741 | Masonry | 12.15 |
| 748 | Form Work And Demolition | 17.51 |
| 751 | Siding And Outside Finishing | 9.80 |
| 764 | Homebuilding | 8.71 |



b) Temp agencies have relatively light (low cost) injury management obligations

For all rate groups, re-employment (following a work injury) obligation applies only to workers with 12 months employment.

- temp agencies avoided this via “term and task” contracts

For temp agencies, re-employment means only that the agency must return the worker to the roster.

- If the worker receives no further work, it can be considered a client employer hiring decision.



III. Agencies groom vulnerable, transient workers to not complain

Low wage temp agency workers: desperate for work, agency work as a last resort (new immigrants, workers with criminal record, workers with addictions, unlucky workers)

Workers can be influenced to not report accidents

"They have to come in and fill in the **15 page accident report**...Because we see a lot of people take advantage of the system... If I get hurt at work... they're still going to pay me. So... sometimes I have had people they come in and they fill in all of this paperwork and they're like, 'Oh my goodness... if there wasn't a serious accident, like I would just leave right now'." (Kerry, recruiter, multinational TWA)

After an injury, workers can be influenced to 'quit' or not take days off (days off increase temp agency's workers' comp costs)

Workers 'voluntarily' suppressed injury reporting



IV. Politics, money, and lack of worker representation

[I]: "Why [doesn't] the agency sector lobby more strongly for shared responsibility with client employers for Worker's Compensation premiums? It would...be in their interest...because they can't control the worksite.

[Wendell]: {Long pause} ...Employers have looked to...strip out all non essential payroll ... one of which is [workers' comp] costs and I think there's ... a...financial incentive to go through a temp agency. ... **They're not lobbying because somehow it doesn't make financial sense to do so. Even though from a health and safety point of view it might be logical. That that's the way it goes."**

(Wendell, Occupational health & safety regulator)

"I think [injury responsibility] could be easily adjusted by saying that every workplace is fully responsible. So there's none of those ... offsetting between: 'one person is the employer and the other one is just the location of the work'.... The regulation needs to switch to the site-specific.... But once you get into that the viability of having a temp agency or using a temp agency disappears"

(Philip, Workers' compensation regulator)



And so

This study examined logic and behaviour of the parties directly involved in temp agency health and safety: workers, temp agencies, client employers.

It suggests a mechanism for high accident rates for temp agency workers:
risky work & perverse policies

It provides a potential explanation for why Ontario seems so 'safe': claim suppression.

Our policy recommendations

- Occupational health and safety regulators apply stronger incentives and responsibility to client employers, who control the work conditions of temp agency workers.
- Health and safety inspectors conduct proactive inspections of workplaces that regularly use large numbers of temp agency workers.



Study impact: Blitz attention from Ministry of Labour

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Temporary Help Agency Blitz Results


In the summer of 2012, the ministry conducted its first Employment Standards blitz, focusing on temporary help agencies. Learn what the officers found in the latest blitz results.


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Study impact: *Stronger Workplaces for a Stronger Economy Act*, Dec 4, 2013

 Ontario

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Backgrounder

Protecting Workers and Increasing Fairness

December 4, 2013 10:00 a.m. | Ministry of Labour

Ontario is introducing the Stronger Workplaces for a Stronger Economy Act to protect the province's most vulnerable workers and increase fairness for both employees and businesses.

 Download Text

Protecting Temporary Help Agency Workers by:

- Introducing 'joint and several liability' between temporary help agencies and their clients. This means making clients jointly and severally liable for unpaid regular wages and unpaid overtime under the Employment Standards Act, 2000. This would help provide employees with better recourse and encourage clients to work with reputable temporary help agencies.
- Amending the Workplace Safety and Insurance Act to require the Workplace Safety and Insurance Board, under its experience rating programs, to assign workplace injury costs to temporary help agency clients — rather than to temporary help agencies — when an employee is injured at work.



RESEARCH

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Temporary work agencies and workplace health and safety

Employment through temporary work agencies (temp agencies) is increasingly common in our changing economy. This type of employment involves workers who are employed by temporary work agencies and then hired out to perform work at, and under the supervision of, clients of these agencies.

The temporary work agency sector is flourishing in advanced economies. In the United States, temporary help services more than doubled between 1990 and 2008, from 1.1 to 2.3 million workers. Similar percentage increases have been noted in most European Union countries. (Comparable statistics for Canada are not collected by Statistics Canada.)

Researchers at the Institute for Work & Health (IWH) have conducted a qualitative study on the management of injury prevention and return to work in temporary work agencies, with a focus on low-wage work. The study has resulted in important findings, which are reported on in a number of resources. These are listed here.

Why study temporary work agencies?

- This [backgrounder](#) explains the health, safety and return-to-work challenges facing the temporary work agency sector.

Understanding health, safety and return to work in temporary work agencies

The IWH study explores the experiences of temporary work agencies, their clients who hire labour from them, their workers and related key informants (e.g. regulators and policy advisers) with respect to occupational health and safety and return to work within the temp agency sector.

- Full study report (2013): [Understanding the management of injury prevention and return to work in temporary work agencies](#) [coming soon]
- Plain-language summary (2013): [Prevention and return to work in temporary work agencies: Summary of study findings and policy implications](#)
- Q & A (2013): [Prevention and return to work in temporary work agencies: Questions and answers about the study](#)
- *At Work* article (2012): [Temp agency workers falling through cracks in OHS system](#)
- IWH plenary (2012): [The management of OHS and return-to-work issues in temporary work agencies](#)
- Journal article (2011): [Legal protections governing the occupational safety and health and workers' compensation of temporary employment agency workers in Canada: reflections on regulatory effectiveness](#) (free access to full text)

Experience rating and temporary work agencies

The study also allowed researchers to take a closer look at the relationship between experience rating and the management of health, safety and return to work.

- Journal article (2012): [Workers' compensation experience-rating rules and the danger to worker's safety in the temporary work agency sector](#) (free access to full text)

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And two more coming....

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Thank you

Questions?



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