



RESPONSE TO INTERIM REPORT

The Staffing Edge

Abstract

The Staffing Edge works with clients to ensure compliance with all government legislation and regulation. We work with THAs to place workers in fulfilling, safe work environments that benefit assignment workers and THA clients. All of our THA clients are required to perform onsite inspections to ensure safety and compliance.

Stacey Duggan
President, The Staffing Edge

Thank you for the opportunity to provide input into the Changing Workplaces Review Special Advisors' Interim Report. This submission provides the input into sections specifically related to Temporary Help Agencies (THAs) and some overall comments.

The Staffing Edge supports many of the guiding principles in the report such as minimum standards of work, decency at work, access to justice, respect for law and creating a culture of compliance. The report also notes the need for creating an environment supportive of business and the changing nature of the economy. Both of these are important factors which form the twin themes of our submission. We believe that we are in alignment with many of the end results stated in the report, but are concerned that the options presented do not help to achieve those goals. In some cases, they flat out hinder the creation of a competitive business climate and ignore the changing nature of business towards leaner timelines and operations, and Just In Time (JIT) delivery.

THAs provide a solution to many of the challenges facing business and assist in making Ontario internationally competitive.

Overview

The Staffing Edge is the largest back office supplier to the contract staffing market in Canada. Servicing more than 150 staffing firms across Canada and the US. These firms are independently owned and operated. The Staffing Edge works with THAs of all sizes.

Part of the support that The Staffing Edge provides is to ensure that the firms are compliant with all Occupational Health and Safety Requirements, training, and workplace safety compliance through inspection tools before placing contract staff with clients. We also assist THAs by providing support to ensure that the THAs operate legally and in compliance with all required legislation and regulations.

The Staffing Edge is committed to ensuring assignment workers are placed in safe working environments. All THAs who work with Staffing Edge are required to do an inspection of the client premises. The Staffing Edge has been a member of the Safety Group Program for more than 10 years – we are an Advantage member.

Together, safety group companies work on key safety initiatives designed to reduce injury frequency and severity. As a member of the group, the Staffing Edge is required to audit our Health and Safety management system annually with the purpose of continuous improvement and development of our safety programs for all workers, including assignment workers.

The Staffing Edge interacts, through the services it provides, with over 25% of the THAs operating in Ontario. Staffing Edge is responsible for the payroll of over 7,000 workers who work through the various THAs. This places us in a unique position to engage with THAs on policy issues such as the Changing Workplace Review.

We are providing input through this submission not only as The Staffing Edge but also on behalf of the THA clients we serve.

Changes to the Ontario Economy and Benefit of Temporary Workers

The Ontario economy has changed over the past twenty years. Many years ago, manufacturing and retail companies would have massive hiring campaigns to cover off peak periods which required a higher number of workers because of seasonal requirements or cyclical production schedules. These workers would then be summarily let go once the production cycle or seasonal requirement had passed. This generally resulted in many employees being terminated and subsequently collecting Employment Insurance (EI). The labour supply industry has been able to assist both employers and employees by smoothing out those transitions and helping to keep employees from collecting EI by placing workers in new assignments.

The industry has matured over the past twenty years; it is able to work with employers to ensure that they have the adequate well-trained labour force that they require at the time they need them the most. A positive result of the industry is that the spike and troughs of mass hirings and firings has substantially subsided.

Chapter 3 of the interim report talks about the changing pressures and trends in business, and we agree much has changed. Businesses need to be more agile and be able to respond faster and with less cost. THAs are well positioned to assist companies and in turn help keep them competitive which helps keep Ontario competitive.

For assignment workers shifting from one assignment to another has also proven to be a benefit. Instead of being hired in one location for 3 or 4 months and then being let go only to have to go onto EI. The worker would then have to look for another job. Workers do not have to go on EI or look for new work, they are now rotated between assignments with different clients.

THAs have provided continuous employment through the year for 26% of employees on payroll across our member firms. Workers are not discouraged from taking full time employment. Approximately 1036 workers have been hired full time by the client location in the past 18 months. THAs encourage permanent employment for assignment workers wherever feasible.

Many assignment workers enjoy the flexibility temporary work provides, the exposure to various skills and exposure to different work environments. The Association of Canadian Search, Employment and Staffing Services (ACSESS) has a Champions program which highlights the inspiring stories of employees working for their member companies. This year one of the employees highlighted was a recent immigrant to Canada and was referred to a THA by the local immigrant settlement services. The experience of working through a THA and being placed in a fulfilling position is one that changed his life. He is quoted on the ACSESS website as saying, **“Temporary work has opened the door to a bright future for me and my family.”**

As in any industry there are some ‘bad actors,’ it is important not to tarnish the entire industry by the actions of a few unscrupulous companies. The interim report contains allegations and anecdotes that assignment workers are assigned to more dangerous workplaces and that the THAs are making exorbitant profits on the backs of poorly treated workers. As will be shown neither scenario could be further from the truth.

Worker safety is the foremost concern for THAs, especially those who are members of The Staffing Edge. ACSESS, the industry association, requires their members to provide leadership in the adherence to both the spirit and letter of all applicable human rights, employment laws and regulations. As part of our contractual agreement THAs are required to inspect client worksites to ensure the sites are compliant and safe workplaces. Host employers are responsible for the safety of all workers at their worksite – temporary or permanent. THAs places employees where they have the required skill set and attempts to find work that they will also find satisfying.

At the end of this report, we have put forward some ideas which would help employers and governments understand who is operating in compliance and who is operating ‘at the edge of the law.’

Interim Report Options

In Section 5.3.9 the Interim Report suggested a number of options that the Special Advisors are considering for their final report. The first option listed is to **Maintain the Status Quo**. Given some of the claims made in the background section of the report, it seems unlikely that the status quo would become the preferred option.

However, upon closer examination there is a case to be made for sticking with the status quo. Many changes were made in 2009 to the *Employment Standards Act* (ESA) to enhance the protections and rights of assignment workers. The Ministry through its inspectors have been vigilant to ensure that THAs are in compliance with the Act. We support the changes made in the Act and are working to ensure compliance.

There are THAs who are not members of ACSESS and do not work with us – they tend work on a ‘cash only’ basis. There are companies who want to work with such agencies. We have heard stories from our client THAs that people come in looking for temporary work only if they can receive their wages as a cash payment. We do not allow such arrangements. Many of the issues raised in the report likely stem from the ‘cash only’ environment between agencies, companies, and employees. Association members and our THA clients operate above board, are in compliance, and will work with the government to ensure that the law is followed.

The government should put its focus on companies that operate in the ‘gray’ and are ‘fly by night’ operations. Those that actively support compliance should not be penalized for the actions of those operators.

It should be noted though that while we will operate in compliance with the law, some of the options being suggested will have a severe negative impact upon THAs. Many small and medium-sized agencies may not survive the changes being proposed.

The remainder of this section examines each proposal and outlines the impact upon THAs.

Option 2

Expand client responsibility:

- a) *Expand joint and several liability to clients for all violations – e.g., termination and severance, and non-monetary violations (e.g., hours of work or leaves of absence);*
- b) *Make the client the employer of record for some or all employment standards (i.e., client, agency, or make both the client and the THA joint employers)*

Staffing Edge Position

Expanded joint and several liability for unpaid wages was part of the changes that were made to the *Employment Standards Act* in 2009. Further expansion of joint and several liability to all violations would muddy the waters of who employs the assignment worker. The same is true of making the client and THA joint employers. If the liability and joint employer proposals were adopted by the government, it would cripple the labour supply industry. Given that businesses have shifted towards lean and just in time operations, any impediments to maintaining a flexible workforce will result in added costs for employers. This could return us to an era of mass hirings and firings which will require greater social intervention through EI and other supports system by the government. This scenario is of no benefit to workers, employers and agencies alike. The current arrangements have smoothed out the peaks and troughs of mass hiring and firing of assignment workers, and we believe there is no desire to return to the past.

It should be noted that in addition to the legal requirements, contracts between THAs and client companies impose further responsibilities for each party towards the assignment worker.

Staffing Edge believes that there will be no increased protection for assignment workers by adopting this section and implementation would have a severe negative impact on the industry. Staffing Edge recommends that the client not be the employer of record as stated (b), especially given that protections are already built into the ESA.

Option 3

Same wages for same/similar work:

- a) *Provide the same pay to an assignment worker who performs substantially similar work to workers directly employed by the client unless:*
 - i) *There are objective factors which independently justify the differential; or*
 - ii) *The agency pays the worker in between assignments as in the EU; or*
 - iii) *There is a collective agreement exception, as in the EU; or*

- iv) *The different treatment is for a limited period of time, as in the UK (for example, 3 mos)*

Staffing Edge Position

The intent of the options listed is not clear. Is the suggestion that same wages for same work would be enforced with all of the provisions listed above or is the intent to cherry pick amongst the options as to which is preferable with the same pay for same work option.

The same wage for same/similar work is not an equal comparison as seniority becomes an objective factor. Would a permanent employee who has worked for a company for 20 years want a temporary employee to come into their workplace and automatically earn the same wage as the long term permanent employee? It is not clear how objective factors, such as seniority, would be determined, administered or enforced. It would likely require the creation on another infrastructure to adjudicate disputes – building upon the already complex structure.

With respect to comparisons to the EU and UK, it is possible that they have margins which allow them to accommodate for such policies. As we will show later, margins in Ontario are substantially smaller than imagined. THAs, like suppliers in many other industries, are subject to margin pressure from their client companies. Wages are also subject to supply and demand factors as well as upon the current minimum wage. The current system of automatic reviews and increases for inflation ensure that wages for assignment workers will continue to increase. That is not to say that assignment workers are paid a minimum wage, they are generally speaking above minimum wage as shown in the next section.

Staffing Edge recommends that the government allow the THAs and client companies to negotiate wages. Wages are set by taking account a number of factors and interference in that process will lead to unintended consequences.

Option 4

Regarding mark-up (i.e., the difference between what the client company pays for the assignment worker and the wage the agency pays the assignment worker):

- a) *Require disclosure of mark-up to assignment worker;*
- b) *Limit the amount of the mark-up*

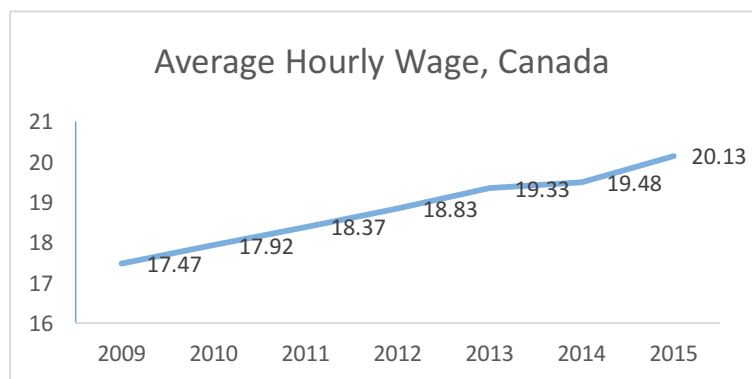
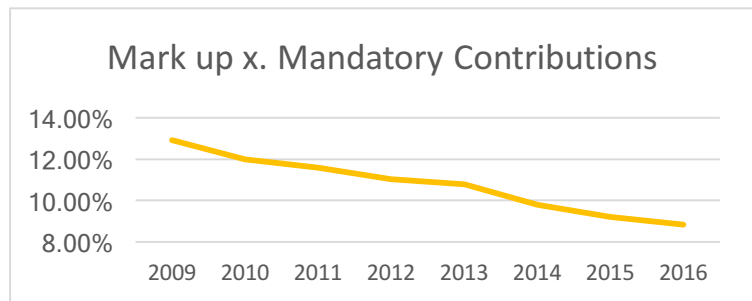
Staffing Edge Position

In the interim report the Special Advisors relied on US data and anecdotal evidence to make the argument that THAs charge a significant premium to clients for assignment workers assigned to a client.

The reality is that in Ontario the THA market is very competitive. The need for client companies to remain competitive and competition within the industry has driven mark-ups significantly down over the past ten years as shown in the graph below.

Mark-ups to clients have three components; mandatory contributions such as EI, CPP, EHT, and WSIB, overhead, and profit. Mandatory contributions are 23% of the average wage or, looked at another way mandatory contributions make up 72% of the total mark-up charged to clients. The majority of the remainder, 28% of the mark-up, is used to pay for overhead costs.

The chart shows the downward trend, from 2009 to 2016, of mark-up once you exclude the mandatory contribution component. The average mark-up in 2016 is about 9%.



The average hourly wage in Canada for temporary employees (as defined by Statistics Canada) has increased by 15.2% until the end of 2015, as shown in the above chart. Inflation increased by 11% over the same period.

Many of the numbers quoted in the report are based on some US studies and anecdotal evidence. This data suggests that mark-ups are 100% or more. After accounting for the costs that the THAs must pay on behalf of the worker the average mark-up is below 9% and on average temporary employees earn over \$20.00 per hour. Further, the burdens associated to employee wages fluctuate annually, thereby a cap would not be possible as a cap percentage, would not take into account these government remittance fluctuations.

Staffing Edge believes that accepting Option 4 as outlined in the report would likely add no significant value to the lives of assignment workers and limiting the mark-up would only serve to put THAs out of business and causing those workers to be unemployed.

Limiting markups would be an unnecessary intrusion into the labour supply market which functions based on demand and supply. Standard mark-up does not account for fluctuations to cost of wages (employer burdens) that must be borne by the THA's.

THAs are committed to their staff. They want to ensure their safety as well as their job satisfaction. Markup has declined year over year and is likely to remain competitive due to the nature of the relationship between clients and THAs.

Option 5

Reduce barriers to clients directly hiring employees by changing fees agencies can charge clients:

- a) *reduce period (e g, from 6 to 3 months);*
- b) *eliminate agency ability to charge fee to clients for direct hire.*

Staffing Edge Position

THAs do not create barriers to assignment workers being hired as permanent employees. If a worker performs well, then they tend to get hired very quickly into a permanent position. It is part of the nature of the business that THAs understand and expect.

However, eliminating the ability to charge a fee for clients to directly hire assignment workers is tantamount to subsidizing the HR department of a client company as there are costs associated with advertising, screening, interviewing, testing potential employees. THAs employ many of these functions on behalf of their client companies. Assignment workers are pre-screened, pre-trained and are 'employment ready' when they go to a client company.

Staffing Edge believes that six-month period established in the 2009 changes to the ESA are adequate and should not be changed. We also believe that eliminating the fee that agencies charge for direct hires is wrong as THAs make an investment in the assignment workers to ensure that they are 'employment ready.'

Option 6

Limit how much clients may use assignment workers (e g, establish a cap of 20% on the proportion of client's workforce that can be agency workers).

Staffing Edge Position

Establishing a cap on the proportion of a client's workforce that can be assignment workers, while it may sound like a good idea, is extremely difficult to measure. The nature of work tends to be project based for a specified period of time. As mentioned earlier, assignment workers are generally brought in to assist in peak production cycles and/or to allow companies to smoothly operate through a seasonal period. Putting an annual average on a company does not make sense in that context.

We can say categorically that the majority (i.e., over 50%) of a company's workforce should not be assignment workers over a sustained period of time.

Staffing Edge believes that placing an annual cap does not work with the requirements of businesses who hire assignment workers for peak periods. Therefore, it does not support annual caps.

Option 7

Promote transition to direct employment with client:

- a) establish limits or caps on the length of placement at a client (i.e., restrict length of time assignment workers may be assigned to one particular client to 3, 6, or 12 months, for example);*
- b) deem assignment workers to be permanent employee of the client after a set amount of time or require clients to consider directly hiring assignment worker after a set amount of time;*
- c) require that assignment workers be notified of all permanent jobs in the client's operation and advised how to apply; mandate consideration of applications from these workers by the client.*

Staffing Edge Position

As mentioned earlier, THAs already accept the fact that a portion of assignment workers will transition to full time permanent employment with their client companies. They do not hinder the transition. Over the past 18 months 26% of THA employees transitioned from assignment worker to permanent employee.

Placing a limit on the length of placement at one particular client only serves to disrupt the routines of assignment workers and provides them with little or no benefit. Assignment workers cannot be 'deemed' to be permanent employees as this would impact on how benefits for employees are administered and could be contrary to other legislation. Assignment workers are aware of permanent positions that exist within a client company as they are located onsite and available positions are generally posted.

Staffing Edge believes that THAs currently do facilitate the transition for assignment workers to permanent employee. A requirement mandating that it do so is not required.

Option 8

Expand Termination and Severance pay provisions to (individual) assignments:

- a) *require that agencies compensate assignment workers termination and/or severance pay (as owed) based on individual assignment length versus the duration of employment with agency (as is currently done) For example, if an assignment ends prematurely and without adequate notice provided but has been continuous for over 3 months or more, the assignment worker would be owed termination pay;*
- b) *require that clients compensate assignment workers' termination and/ or severance pay (as owed) based on the length of assignment with that client; assignment workers would continue to be eligible for separate termination and severance if their relationship with agency is terminated.*

Staffing Edge Position

Current legislation already addresses many of the issues raised for termination and severance pay. The ESA protects employees for short term layoffs and then lays out the requirements for termination. If they were required to terminate an employee following every assignment, this would impede the tenure growth with their employer overall. This would prove to be problematic as someone might be receiving termination pay during a time when a new position is available to work. THAs serve to create continuous employment for its employees wherever possible. Where it is not possible, they are governed by requirements in the ESA for termination pay.

Staffing Edge believes that termination and severance is adequately addressed in the *Employment Standards Act*. and THA's are responsible to these requirements. No further changes are required.

Option 9

License THAs or legislate new standards of conduct (i.e., code of ethics for THAs).

Staffing Edge Position

THAs are subject to many workplace rules and regulation through regulation and legislation. Further licensing of THAs would serve little or no purpose as those that are operating within the law will continue to do so with or without licensing. Those that are operating in the gray zone or on a cash only basis will be driven further underground making it even more difficult for the government to stop those practices.

The government should focus its efforts on addressing those that are flagrantly disobeying the rules and see that those operators are shut down.

Staffing Edge does believe there is some value to establishing a code of ethics and is willing to work with the government to create one for THAs.

An Alternative Approach

Staffing Edge believes that there is an opportunity through the report to create a governance structure that would instill confidence in general public, assignment workers, client companies, and the government that THAs are operating in compliance with rules and regulations.

Staffing Edge is proposing a self-regulation model could provide a solution to the challenges laid out in the report.

Staffing Edge does not have any preconceived notions on the regulatory structure, that would need to be worked out in discussion with the government. However, it does believe that some of the functions that it could provide would be to:

- Establish a code of conduct
- Certify that THAs are members/clients of Staffing Edge thereby indicating that Staffing Edge is satisfied that they have met all regulatory requirements
- Enhance the current inspection requirements by issuing a 'pass' certificate to THAs
- Require an annual report back to the government on the state of the industry.

This would allow the government to be satisfied that the rules were being followed and it would indicate to client companies who is in compliance with the rules and who is not. Staffing Edge would like to discuss this idea in greater detail.

Conclusion

Staffing Edge believes the Special Advisors to the government on the changing workplace, the government and Staffing Edge all share the same goals of ensuring a safe working environment for assignment workers. We need to be vigilant to ensure that we are not 're-inventing the wheel' through this review and need to take into consideration how the current regime provides protection to assignment workers.

The government should vigorously pursue those who operate outside of the rules. The entire industry should not be punished for their actions. As the rules change and evolve it is also important to ensure that client companies are able to remain flexible and maintain their competitiveness. To do otherwise will have consequences beyond that of just the assignment workers.

Staffing Edge would be pleased to meet with the Special Advisors and other government officials to discuss these ideas in further detail. Thank you once again for the opportunity to provide input into the interim report.