



The management of occupational health and safety and return to work issues in temporary work agencies: findings from a qualitative study

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What do we know about temp agencies? Why study them?

The temporary work agency sector is flourishing

- An increasingly established part of new flexible labour markets. (Luo et al. 2010; Coe et al 2010)

The role of temp 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 positions. (Purcell et al. 2004; Connell & Burgess 2002; Hatton 2011)

The triangular arrangement can be unclear

- The agency is generally the worker's 'employer'. But the legal and practical responsibilities of each party (worker-agency-client employer) are not always clear. (Underhill 2010; Hatton 2011)



Temporary agency workers are at greater risk of occupational accidents and diseases than permanent workers

- *Netherlands and Germany:* TWA workers accounted for as much as 13% of occupational accidents, but comprise only 3% of the jobs. (EFILWC 2007)
- *Finland:* Workplace accident frequency for TWA workers on the increase despite general downward trend in main industries. (Hintikka 2011)
- *USA:* TWA workers have higher workers' compensation claim incidence rates than those in standard employment arrangements, longer claim durations, and double the incidence rate in the construction and manufacturing sectors. (Smith et al. 2010; Park & Butler 2001)
- *Canada??* Statistics Canada has collapsed the categories of temporary workers in their most recent analyses of temporary work, which makes it difficult to document TWA working conditions. (Galarnau 2010)

SO—How do TWAs manage injury prevention and management?



The OHS position of TWAs in Ontario

“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 OPM)

“If you pay a temporary help agency for the services of workers supplied by the agency, you are the employer of those workers while they are under your direction.” (OHSA)

TWA Safety Group gets large rebates.

- 2006: \$600,000.... 2007: \$1,723,205.92..... 2011: \$905,681.07

Given that rebates or penalties are a key incentive in the prevention of injury and disability, it is important to understand how these mechanisms apply to TWAs and their client employers.



Focus of today's presentation

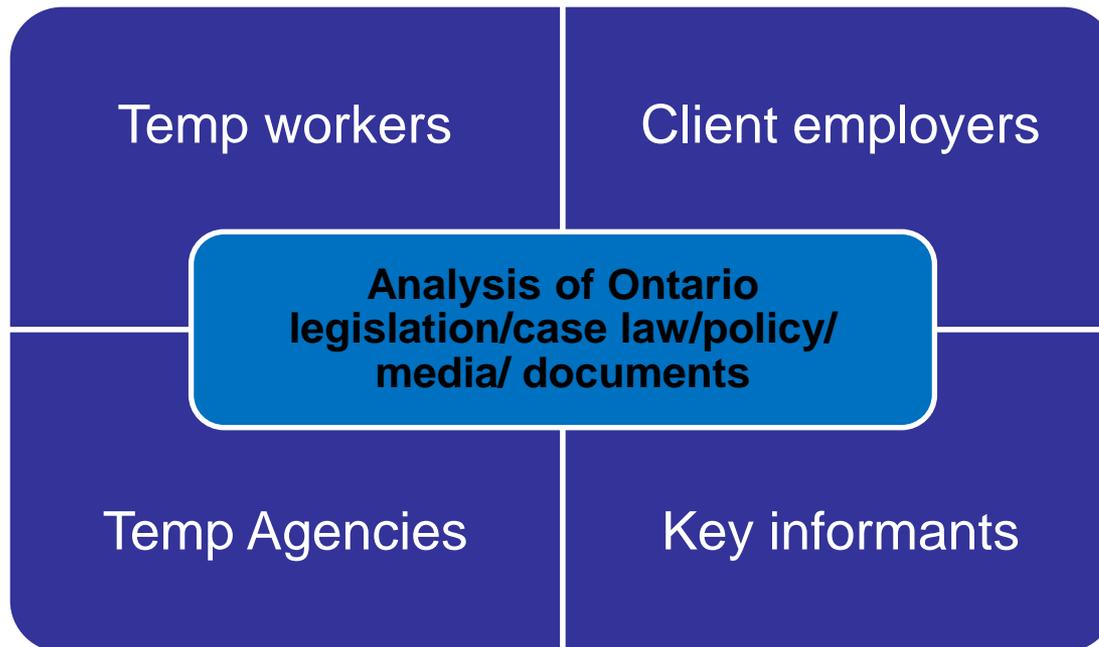
1. How we conducted the study
2. Findings
 - The employer-worker relationship
 - OHS and business
 - TWAs and injury prevention
 - Client employers and injury prevention
 - Managing OHS costs
3. Conclusions
4. Policy recommendations



Method

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

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



Purposeful sample:
low wage workers &
jobs

The participant sample

Participant Category	Industry/Focus <i>(Brampton, Hamilton, Kingston, Toronto, Waterloo)</i>	Total # of Participants
Workers	Purposely focused on workers engaged in relatively low skill/wage jobs, such as general labour, warehouse, and service work	19
Client Employers	Transportation, beverage manufacturing, property management, laboratory, charity, restaurant, waste management, warehouse <i>(VP, Senior manager, Site supervisor)</i>	12 (11 workplaces)
Temporary Work Agencies	Manufacturing, general labour, forklift operators, special events, warehouse/logistics, clerical <i>(Recruiter, Office manager, Owner, CEO, Risk management specialist)</i>	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



The document sample

Document analysis	Legal analysis
<ul style="list-style-type: none">• TWA promotional material• TWA websites• TWA worker online blogs• TWA manager online blogs• Bill139 Hansard records• Media articles	<ul style="list-style-type: none">• Workplace Safety and Insurance Act• Occupational Health and Safety Act• Workplace Safety and Insurance Board Policy• Case Law



Interview questions



- Experience of work with or for a TWA
- Pros and cons of working with a TWA/temporary workers/ client employers
- Communication
- Contractual arrangements
- Management of labour challenges
- Experience with TWA work and health issues
- Injury prevention
- Return to work management.



Analysis

Iterative process guided data gathering and analysis; each informed the other.

Systematic data coding procedure to capture pre-set and emerging dimensions of the data.

Interconnections within data and against the backdrop of documentary data.

All data analyses conducted by several team members; discussed by the full team at regular bi-monthly meetings.





Advisory Committee

A multi-stakeholder Advisory Committee has 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





I. All parties used a vocabulary of social disconnect, which cast the workers as products

Worker Terms

- “I feel like a *second class citizen*”
- “I am a *commodity*”
- “I am *easily disposable*”

Agency Terms

- “I have 1600 *T4s*” (tax forms)
- “The workers are a product, like *hamburgers*”
- “Sometimes we *recycle workers*” (send to another employer if rejected by the first)

Client Employer Terms

- “I said, ‘Send me some *gorillas*’”
- “I put in my *order*”
- “Workers have a *flexibility mindset*”



II. Within this detached social context, occupational health and safety competed with business interests

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)



III. TWAs did *what they could* to prevent injuries but their efforts were ineffective (7 reasons)

- 1) Agencies can't manage actual health and safety conditions because they never actually control the work or own the work site.

"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)

"In the temporary staffing industry, there's a highly transitional workforce that enters a work environment that companies like The People Bank **cannot manage, supervise or control.**" (Steve Jones, President, The People Bank, Daily Commercial News and Construction Record, May 20, 2011)



2) Agencies provide generic occupational health and safety training to workers. Client employers are supposed to show worker around the site.

But.... newness to the worksite and specific local hazards posed special dangers. Workers on a new site do not know their way around it. They are unfamiliar with the flow of work.

"If it's your first time in a warehouse a lot of people don't even realize what's going on and they are just **stumbling around** and **falling over** and knocking things down..... And it's just one of those things." (Sean, temporary worker)

"There's a way to grab. This [agency] guy is grabbing...the tire...and then throwing while you're carrying the **dead weight**. ... We had all learned...that if you grabbed it a little lower...the tire would start to spin...It gives us momentum... **But we never showed anybody [agency staff] any of that stuff**, not how to handle a tire...where to stand...put your feet... how to throw it right... None of that stuff. **They never got any of that experience from us.**" (Darren, worksite supervisor)



3) Agencies might inspect a worksite before placing a worker. But.... work conditions can change day to day.

“We had...one customer who...has a habit of **un-guarding their machinery as soon as our backs are turned**... The only 3 incidents of injury that we have had in the past 2 years have all been in the same place, and all have been because they take the bottom guards off this machine. It moves a lot quicker.” (Doug, owner, small TWA)

“The challenges become when the **client changes what they are looking for or changes their requirements when the person is there**... You try and keep on top of it as best we can. But because **we're not there** and because in a lot of cases **the person that we deal with isn't the lead hand on the floor** ... you can't always see the changes that are happening.” (Jason, recruiter, multinational TWA)



4) Even if an agency does inspect a worksite.....TWA staff lack the occupational health appraisal skills of formally trained safety inspectors. They do not always recognise hazards and have limited enforcement capacity.

“The other thing with the temp agency ... they've started now, is they do an assessment of the company. So...somebody is supposed to go out and they do...a walk around tour. ... [But] They don't know what they're looking at, even though they go and do a survey. Like the one with the guy that was killed and...they did a [site inspection] survey and part of that survey was [if it was] machine guarded and ... nowhere [were they] even close to meeting the requirements.” (Joseph, OHS inspector)



5) Agencies rely on workers to ‘speak up’ about day-to-day work conditions. But.... these under-employed workers were reluctant to mention worksite hazards for fear of risking the job placement, and in some cases offending the client employer if there was a possibility of being hired.

P: “We can't be there 24-7....So we have to rely on our workers that are on the job site and they're instructed, 'If you see something...that's unsafe, then you ask your supervisor...to rectify the problem'....Or I said, 'You know, ultimately...if nothing is done about it then...you're not obligated to do the job. You know... you can stop working on it. But you should kind of clarify it through your supervisor. You know, kind of work with them'.

I: So, do you have workers coming back to you sometimes...?

P: Hmm, not very often..... I am **hoping** that they will....bring it up.” (Lester, owner, small TWA)

“We have to carry the heavy boxes... Eventually our agency said... next time...let us know...because you're paid only for lighter things. But in that situation **you don't want to offend** the...agency and also the employer both.” (Renshu, temporary worker)



6) Even when agencies do hear of a worksite hazard, they can do little but withdraw or “ask nicely” for improvements. This leaves workers exposed until a final decision is made to end the contract.

“On a construction site... they were working... at 3 or 4 stories high and there was a big opening, and ... it wasn't railed off or guarded...so somebody could easily slip and fall over. ... So **we asked them nicely** on 2 or 3 occasions to do something about it and ...one of our guys reported that **nothing was done**. So we said, 'Okay, you're off the job.'... You know...until they get it done we won't send you out there'.” (Lester, owner, small TWA)

[Jeremy] “We just make sure that we...**reduce the people we have working there.** / [Jessica] **Make sure we get paid.** / [Jeremy] **Make sure we get paid, mitigate the risk. Then shut the doors.**” (TWA managers, small TWA)



7) Agency workers have no systematic way to provide input on temporary-work-related health and safety conditions. Although agencies have hundreds of employees, *in practice* they are not required to have Joint Health & Safety Committees.

Occupational Health and Safety Act

Joint health and safety committee

(2) A joint health and safety committee is required,

- (a) at a workplace at which twenty or more workers are regularly employed;
- (b) at a workplace with respect to which an order to an employer is in effect under section 33; or
- (c) at a workplace, other than a construction project where fewer than twenty workers are regularly employed, with respect to which a regulation concerning designated substances applies. R.S.O. 1990, c. O.1, s. 9 (2).

Except temp
agencies

But.... there are risks specific to TWA work that would not get discussed at a client employer JHSC.



IV. When accidents happen, the client employer accident record looks clean. So they have little incentive to improve safety for agency workers.

“We were providing industrial labour... to a client. The client was receiving a [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 record looked...perfect... The WSIB thought he was great.**” (Vaughn, owner, mid-sized TWA)



V. Although TWA workers appeared disproportionately exposed to injury costs, agencies can manage work accident costs (we show 5 ways)

- a) Employer rate classifications, together with experience-rating, can make agency accidents relatively inexpensive. When TWAs pay lower workers' compensation premium rates than client employers, they can build their own lower rate into the contract price.

Example:

Employers assessed in a high rate group because of the sector accident rate, such as “*wooden pallets and boxes*” pay **\$6.83** per \$100 payroll.

They can outsource this work to a TWA , who are assessed in the lower “*supply of labour-non clerical*” rate group at **\$4.62**.

With this arrangement, the same accident (experience-rated WSIB premiums) will cost the agency less than the client employer.



WSIB 2010 Premium Rates Table

Description	2010 Premium Rate (\$)	2009 Premium Rate (\$)	Percent Change
929	Supply Of Non-Clerical Labour	4.62	4.62 0.0%
689	Waste Materials Recycling	5.90	5.90 0.0%
711	Roadbuilding And Excavating	4.68	4.68 0.0%
719	Inside Finishing	6.75	6.75 0.0%
723	Industrial, Commercial & Institutional Construction	4.35	4.35 0.0%
728	Roofing	13.30	12.98 2.5%
732	Heavy Civil Construction	6.34	6.34 0.0%
737	Millwrighting And Welding	6.25	6.25 0.0%
741	Masonry	11.15	11.15 0.0%
748	Form Work And Demolition	16.50	15.86 4.0%
751	Siding And Outside Finishing	9.25	9.14 1.2%
764	Homebuilding	8.71	8.71 0.0%
312	Wooden Boxes And Pallets	6.83	6.83 0.0%
570	General Trucking	5.79	5.79 0.0%



b) Some agencies discouraged worker injury reports by requiring long detailed written accident reports and questioning injury legitimacy.

"They have to come in and fill in the **15 page accident report** even if they don't see a doctorbecause 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... I wouldn't want to.... if there wasn't a serious accident like **I would just leave right now**' and type of thing." (Kerry, manager, multinational TWA)

"We come across it a lot..... They have **pre-existing back injuries.**" (Vaughn, owner, mid-sized TWA)



- c) Even when a workers' compensation claim was filed, the short duration on the TWA roster usually meant the agency employer had no re-hire obligation. If they do have this obligation, rehiring involves only placing the worker back on the roster. If the worker receives no further work, it can be considered a client employer hiring decision.

Fit for pre-injury jobs

WSIB OPM 19-04-05, Alternative Work Comparable to the Pre-injury Job

The temporary help agency meets the re-employment obligation by offering comparable employment when the worker is able to perform the pre-injury work, and is returned to the employment placement roster for normal rotation to job assignments (see).



d) Agencies can 'protect themselves' contractually.

"Lack of experience is always going to be a risk... and lack of knowledge of the site is always going to be a risk.... **That's almost impossible to manage....** We try to take really good job orders, we try to give our workers a good outline of what the job is supposed to be on the site, we do ask our customers to give us site specific... training when they get there, even if it's just a quick walk around and show them the hazards.... We ask all of our clients to do that and they...sign off that they're going to do it. **I don't know if they all do it, but you know?...It's certainly asked to be done.** And again...when you ask people to do things, you're asking them to do it in writing for more than just-- You're **hoping** they will do it, but you know **if they don't do it you're protecting yourself.** Because if someone agreed to do something right and they don't do it and something happens more of the **liability goes on them.**"
(Kendrick, risk management specialist, multinational TWA)



e) Agencies can be run with very little physical infrastructure. In face of very high fines or surcharges, smaller agencies can easily close and re-open, avoiding all charges if company directors have no identifiable assets.

“They are opening and closing all the time, going bankrupt... I mean, you can run a temporary agency with a Blackberry, right? ... But you’re sucking that accident cost with you.” (Arthur, workers’ compensation regulator)



Conclusions and policy recommendations

Various conditions, such as client employers lacking normal prevention incentives, mean that temp agency workers face relatively high OHS risks.

At the same time, agency workers have less OHS protection than do regular workers. Their agency employers don't control the worksite, don't fully know the risks, and mostly aren't there.

It seems cost effective to have agency workers, rather than regular workers, get hurt.

This is not a 'bad apple' issue. It is a broad 'structural' issue. It is about loopholes and incentives that leave TWA workers without the same protection of regular workers.



Policy recommendations

Legislation and policies need to catch up with the reality of today's work conditions. **Three key suggestions:**

- 1) Experience-rating **prevention incentive** is currently applied to an employer that does not control the work or work site. The client employer has minimal prevention incentive for temp workers. **Therefore apply experience-rating to the controlling employer: the client employer.**





2) TWA workers are known to face high accident risk. Yet they have no access to a JHSC that would address specific temp risks. **Therefore enforce existing JHSC requirements.**

- **Agencies should be required to set up JHSCs that address their issues, such as:** how to safety navigate job site newness, social isolation, not knowing where things are, how to manage when a client employer asks you to do extra work, who to tell when there is a health risk, how to tell about a risk without losing your work placement.





3) TWA workers face extreme employment insecurity. Low wage/skill workers are particularly unable to ‘speak up’ about poor work conditions. **Therefore have proactive investigations of workplaces that regularly hire large numbers of TWA workers.**

- This is in keeping with the **Dean report**. It recommends more proactive inspections of workplaces where **vulnerable workers** are concentrated. In this report, workers in the **temporary staffing industry** were among the groups of vulnerable workers identified to the Panel.



Finally--finding the *will to act*

[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 WSIB costs and I think there's probably a...financial incentive to go through a temp agency. ... **I'm assuming that they're not lobbying because somehow it doesn't make financial sense to do so. Even though while from a health and safety point of view it might be logical. That that's the way it goes.**" (Wendell, Occupational health & safety regulator)

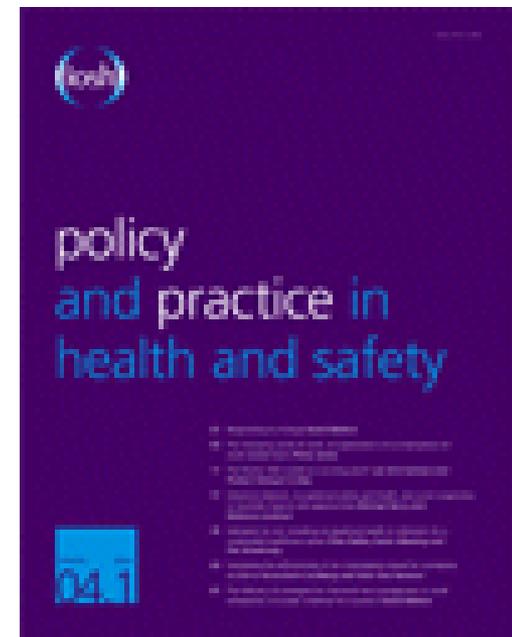
"I think the biggest [challenge] is the idea of responsibility... **I think it could be easily adjusted by saying that every workplace is fully responsible.** So there's none of those joint or offsetting between: one person is the employer and the other one is just the location of the work..... **The 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....**It would be a lot more effective if the workplace was accountable and that's what has to change." (Philip, Workers' compensation regulator)



For more study detail and further policy recommendations, see our two published articles (to date):

MacEachen, E., Lippel, K., Saunders, R., Kosny, A., Mansfield, L., Carrasco, C., Pugliese, D. Has worker safety become a market commodity? *Workers' compensation experience rating rules and the danger to worker safety in the temporary work agency sector*. Policy and Practice in Health and Safety (in press).

Lippel, K., MacEachen, E., Werhun, N., Saunders, R., Kosny, A., Mansfield, L., Carrasco, C., Pugliese, D. *Legal protections governing occupational health and safety and workers' compensation of temporary employment agency workers in Canada: reflections on regulatory effectiveness*. Policy and Practice in Health and Safety, 9(2), 69-90.





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Questions?



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