

# UNDERSTANDING THE MANAGEMENT OF INJURY PREVENTION AND RETURN TO WORK IN TEMPORARY WORK AGENCIES

## Final Report

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## **About the front cover**

Throughout the course of the study, the research team compiled a glossary of key terms expressed mostly by temporary work agency staff to describe workers, the temporary work context, the temporary agency sector and the management of occupational health and safety. A word search of interview transcripts was then conducted to determine the frequency of use of these glossary terms. The results were entered in an online software program, Tagxedo, which generated a 'word cloud'. Words in the cloud are sized to show the frequency of their use by study participants.

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## **EXECUTIVE SUMMARY**

### Study Rationale and Objectives

Temporary work agencies (TWAs) are an entrenched form of non-standard work and are a part of contemporary flexible labour markets, where the labour forces of organisations can be quickly and easily increased or decreased in response to demand for their product. TWAs create a triangular employment arrangement where a worker has two sets of employers: the agency and the client (placement) employer and different legislation assigns different responsibilities to each party. In Ontario, there are over 700,000 temporary workers and more than 1,300 TWAs. A key occupational health problem identified in studies across jurisdictions is that temporary workers are at greater risk for occupational accidents than permanent workers.

The objective of this study was to understand how TWAs are organised to manage injury prevention and return to work in light of their non-standard organization, and to examine industry-specific policy, legislation, industry norms and practices. The study focused on job placements for unskilled and semi-skilled jobs by temporary agencies of all sizes. What are the responsibilities of client firms for the protection of workers' health and safety? How do TWAs manage a diverse workforce and interact with client firms to whom they lease the workers? How do agency managers communicate with workers and clients about workplace safety? What injury prevention and management systems and practices exist within TWAs? A final objective of this study was to identify ways to protect the workplace health of TWA workers.

### Method

This research study used qualitative methods, which are well suited to examine experience and process, including social relations, and exploratory topics about which little is known. The data consisted of interviews and focus groups with 64 participants and a legal analysis of legislation, case law, and policy governing Ontario temporary work agencies and their approaches to workplace health. The interview participants included temporary workers employed by temporary work agencies for lower-skilled jobs, client employers who hire labour from temporary work agencies, temporary agency management staff who interact with workers and clients, and key informants who have a detailed understanding of the policies and practices of the temporary work agency sector. Focus group and interview data were analyzed according to a general grounded theory and discourse analysis method and considered together with the legal-policy analysis. A nine-member multi-stakeholder Advisory Committee, with representation from the Ministry of Labour, WSIB, labour, legal experts, employer and worker advisors, and worker advocates guided the study.

## Findings

We report findings in three parts: why work is so risky for temp agency workers, temporary agency injury prevention efforts and their limited effectiveness, and TWAs and the problem of return to work.

### **Why work is so risky for temp agency workers**

- Structural legal incentives in WSIA actually encourage the outsourcing of risky to client employers
- WSIB rate groups make this risk transfer particularly affordable to TWAs.
- When risks became unaffordable, smaller agencies were well positioned to simply close and re-open, leaving work and health fines behind.
- We found that the three-way employment relationship, where agency workers were employed by the TWA but sent to work and be supervised at client employer sites, created certain risks for workers. Workers lacked familiarity with equipment and processes. In some situations, their presence posed a job threat to permanent workers; they were disliked and their work was sabotaged.
- Temp agency employment arrangements involve agency staff assigning workers to jobs when they do not fully know the work site or precise job needs. This could lead to dangerous mismatches between the worker's ability and the job tasks.
- The health and safety vulnerability of agency workers was exacerbated by the practical uncertainty among client employers and agencies about who was responsible for on-site risk job training and hazard appraisal. This was framed by agencies taking a legalistic 'due diligence' approach to covering their legal responsibility, without necessarily knowing the practical conditions to which workers were exposed.
- Job risk for agency workers was also enhanced by the inherent economic vulnerability of agency workers. As the low wage workers in our study engaged in agency work as a last resort, and as their employment could end at any moment, they were positioned to be particularly compliant and accepting of any work provided to them. This meant that agency workers accepted client employer and agency inducements to work at fast pace and for long hours.
- Finally, agency workers lacked access to the legally mandated forum provided to all workers in Ontario workplaces with 20 or more workers. Despite their known elevated injury risk when compared with other workers, the Ministry of Labour, by virtue of its interpretation of the statutory requirements, has in practice exempted agencies from the Joint Health and Safety Committee requirement, leaving these workers with no formal venue to discuss and propose solutions for the risks they face as temp workers, including those related to newness on the job as well as training problems and provision of inadequate safety equipment.

### **Temporary agency injury prevention efforts and their limited effectiveness**

- Although agencies generally provided their workers with generic safety training, the on-site conditions would be quite varied and the generic training could have limited utility.
- Agency staff described conducting pre-placement site visits for every client employer site, but these visits would be of limited value because conditions change day by day at work sites and also agency staff are not fully trained inspectors with the capacity to understand all relevant risks at different workplaces.
- Agency staff tried to manage day-to-day worksite risks by instructing their workers to tell them of any job changes or OHS hazards. However, temporary workers don't necessarily have the skills to identify occupational hazards in new worksites, and the reality of their insecure employment position with the agency would lead low wage workers such as those in our study to remain silent to preserve the continuity of their job placement rather than to complain and possibly disrupt their income stream.
- We found that agencies were not very proactive about identifying post-placement OHS risks. That is, the agency staff in our study did not describe regularly following up with workers about their job placement conditions. If there was communication, it seemed instead to focus on job tasks assigned in relation to agency charge-out rates.
- Even when agency staff did learn of significant OHS hazards at a client worksite, they sometimes weighed the relative risk of removing the workers versus losing the client contract. This led to ongoing worker exposure to known hazards while agency staff 'asked nicely' for client employers to improve conditions.

### **TWAs and the problem of return to work.**

- Agencies sometimes engaged in workers' compensation claim suppression. That is, some misinformed their workers about their eligibility for workers' compensation, and others imposed heavy reporting requirements to discourage workers from completing the necessary forms.
- TWA staff in our study described resisting the notion that they should be responsible for managing their workers' injuries and return to work. Some depicted the employment arrangement with the worker as 'only temporary' and they had no social relationship with the worker. A regular comment from agency staff was that worker injuries were illegitimate and therefore worth resisting. These conditions were not conducive to the rehabilitative needs of modified work arrangements.
- When workers were injured on the job and a claim was filed with WSIB and accepted, client employers faced no work reintegration or re-employment responsibility. This is because the WSIA only the agency is recognized as the employer, despite the reality that the work injury occurs on the client employer premises and under their supervision.
- When injuries were recognized by WSIB and TWAs were required to provide work accommodations to workers during their recovery period, they faced difficulty providing proper modified work. Agencies mostly described finding 'make work' for the worker in

their agency office. However, in practice, injured workers simply got in the way of the office staff. These workers, who had been placed in jobs such as warehouse work, could be ill-suited to office work and in some situations agency staff simply shunned the workers, a practice that workers described as making their modified work experience particularly unpleasant. In some cases, injured workers became “reduced rate” workers who agencies placed free of charge or at very low rates in charities or other client employer sites. An over-riding concern of some agencies was avoidance of workers compensation premium costs related to ‘lost time’ which were incurred when workers did not attend work during the WSIB benefits payment period. It was unclear whether this practice of placing injured workers at other sites for modified work was at all rehabilitative for the worker, or whether it included accompanying information about the workers’ injuries and physical restrictions.

- When workers have completed modified work, agencies face a relatively light re-employment obligation. This is because their responsibility, as interpreted in policy by the WSIB, is simply to return the worker to the agency roster and not to an actual job. In any event, the re-employment provision rarely applied to agencies because it comes into effect for workers with at least 12 months tenure with an employer and this would rarely be the case with agency workers.

### Recommendations

This study has identified several areas where regulations provide inadequate employer incentives to prevent injury to temp agency workers, promote return to work and ensure accountability.

This led to the following policy recommendations:

1. Apply stronger occupational health and safety incentives and responsibility to client employers, who control the work conditions of temp agency workers.
2. Apply existing joint health and safety committee (JHSC) requirements to temp agencies.
3. Conduct proactive inspections of workplaces that regularly use large numbers of temp agency workers.
4. Apply stronger occupational health responsibility to temporary work agencies that ‘close and re-open’.

### Conclusions

This study identifies consistent structural mechanisms that create specific OHS risk for agency workers and that severely limit effectiveness of TWA injury prevention activities. It also identifies inherent characteristics of TWA employment arrangements that render return to work efforts by agencies an exercise that is awkward, non-therapeutic for workers and resisted by agencies. These conditions apply to all Ontario agencies and some apply across workers and employers employing temp workers in low-skill jobs across different jurisdictions. As such, our



findings offer an alternative to explanations that elevated injury risk in the TWA sector is largely due to rogue, ‘bad apple’ employers, poor quality workers, or simply to ‘newness’ of workers to their placements.

We argue that Ontario policy loopholes, together with the three-way employment relationship, put agency workers at particular OHS risk. The heightened OHS risk of agency work has been observed elsewhere, as has the ineffective and unsatisfactory allocation of occupational responsibility to temp agencies as the sole employer.

The findings of this study could be of particular interest to jurisdictions with similar allocations of OHS responsibility to temporary work agencies and client employers. These include not only other Canadian provinces but also Australia and the United States. Other jurisdictions with high temporary work agency sector penetration, such as Europe and Japan, might be interested in risk mechanisms identified that relate to the three-way employment relationship.

## **I. TWA INDUSTRY AND OHS CONTEXT**

### **Temporary Work Agencies**

TWAs are an entrenched part of new flexible labour markets, where the labour forces of organisations can be quickly and easily increased or decreased in line with demand for labour (Atkinson, 1984; Connell & Burgess, 2002; Ward, Grimshaw, Rubery, & Beynon, 2001). The rationale provided for hiring temporary agency workers tends to be labour cost savings associated with organizational downsizing, increased global competition requiring organisational nimbleness, new technology that makes a full time workforce redundant, and the need to respond quickly to continually changing marketplaces (Connell & Burgess, 2002). For this reason, TWAs have been described as offering organisations “labour-on-tap” (Connell & Burgess, 2002), or “no strings attached” workers (Peck & Theodore, 2001). Other uses of temp agencies are the shedding of internal labour costs and the shifting of recruitment, training, and benefit costs to TWAs and temporary workers (Forde & Slater, 2006; Gray, 2002; Hatton, 2011). Indeed, temporary agency workers are increasingly employed on an ongoing basis as a long-term strategic alternative to direct employment (Holst, Nachtwey, & Dörre, 2010; Vidal & Tigges, 2009) and, in some cases, permanent jobs are being converted into temporary positions (Connell & Burgess, 2002; Gray, 2002; Mitlacher, 2006; V. Smith, 1998). A further reason why temp agencies are used is so that client companies can avoid health and safety costs (Johnstone & Quinlan, 2006; Underhill, 2010). This latter reason became a key focus of our study.

Temporary work is not a new phenomenon and dates back to the beginnings of the industrial revolution. However, its current manifestation is novel, and it is a form of work that is on the rise. Hatton (2011) argues that, beginning primarily in the years following World War II, the temporary agency sector in the United States used a variety of strategies to replace the prominent “asset-based” model of workers with a view of workers as a costly “liability”. In the 1950’s, the industry cast temp work as women’s work to justify a new, marginal, yet respectable category of work (The Kelly Girl image) which then shifted in the 1960’s and early 1970’s to a model of human labour as analogous to machine work, to be plugged in as needed.

Hatton (2011) proposes three main reasons for the growth of TWA work over recent decades: first, temp agencies pushed deeper into client companies by offering new services such as “vendor on premises”; second, temp agencies entered new occupational sectors, sometimes taking over entire departments via “in-house outsourcing; and finally, temp agencies began expanding globally, merging with overseas competitors and actively pushing for TWA-friendly legislation.

The relationship between TWAs and the wider labour markets in which they are embedded has been described as mutually reinforcing (Peck & Theodore, 2001; Peck & Theodore, 2002). That is, there is pressure in work organisations to cut costs, become more flexible, and minimise payroll and this is reflected in the proliferation of temporary staffing. At the same time, TWA sales teams actively pursue new business opportunities by promoting the cost-reducing, flexibility-enhancing, and labour-controlling virtues of temporary employment to client firms. The organisation and promotion of temporary agency work is evident in Canada, where the Association of Canadian Search, Employment, and Staffing Services (ACSESS) represents 80% of the industry and is organised to “promote the advancement and growth of the employment, recruitment and staffing services industry in Canada” (ASCESS, 2012)

### **The Triangular Employment Relationship**

Temporary work involves a triangular arrangement where the TWA hires a worker for the purpose of placing him or her at the disposal of a third party. Under Ontario’s employment standards legislation, a TWA is considered to be the employer of a person it sends to work for a client business, and this is often the case in other jurisdictions and under other legislation (Europa, 2008; Underhill, 2010; WSIA, 1997). However, the legal and practical responsibilities of each party are not clear (Lippel et al., 2011; Underhill, 2010) and the triangular relationship creates some ambiguities in relation to occupational health and safety activity management and accountability. The separation of the ‘legal employer’, the TWA, from the ‘supervising client-employer’ subjects workers to two masters. TWA workers can be uncertain about who their real employer is (LCO, 2004), and may struggle to assert their rights as a result of being exposed to fundamentally different power dynamics than standard workers in bilateral employment relationships (Kalleberg, Reskin, & Hudson, 2000). Temporary workers also face difficulties with collective organisations, as they are scattered (LCO, 2004) and stratified within workplaces (V. Smith, 1998). Fuller and Vosko’s (2008) analysis of temporary workers in Canada finds that those in TWA arrangements are least likely to be unionised.

### **Growth of the TWA sector**

Temporary work in Canada, including TWA work, is on the rise. In 2012, out of approximately 15 million employed workers in Canada (not including self-employed), over 13% (approximately 1.9 million workers) were classified as having temporary employment (Statistics Canada, 2012). This represents a 12 % increase from 2009 figures and outpaces growth in permanent employment by almost double for the same period (Statistics Canada, 2010b). Since 2007, Statistics Canada has collapsed the categories of temporary workers, making it difficult to gauge the size and activity of the temporary work agency sector (Galarneau, 2010). However, statistics for the Employment Services industry indicate significant national growth. In 2010, the operating revenues of the Canadian employment services industry rose to \$9.3 billion (up 8.3% from the previous year), and more than half of industry sales (56.3%) resulted from temporary staffing services alone (Statistics Canada, 2010a). Moreover, the Canadian Staffing Index, which is produced by ACSESS and Staffing Industry Analysts, reported a 26% year-over-year Index

score increase from May of 2011 to May of 2012 (ACSESS, 2012). The Index score measures the hours of labour performed by temporary and contract staff and is a good indicator of volume of demand for temporary staffing.

It is estimated that there are 25 million temporary agency workers internationally. This is equivalent to a daily average of 9.5 million workers on a full time basis (CIETT & BCG, 2011). In Ontario, there are over 700,000 temporary workers; many of whom are employed by agencies (Ministry of Labour, 2008) and more than 1300 temporary work agencies (Welsh, 2008). Ontario has consistently dominated the Canadian employment services industry, with operating revenues in 2010 comprising 56% of the national total (Statistics Canada, 2010a). Europe is the leading region for the TWA sector, accounting for 40% of total global sales revenues. By country, Japan, the U.S. and the UK are the global sales leaders with total annual sales revenues of 24%, 22% and 12% respectively (CIETT & BCG, 2011). With respect to number of agency workers, the U.S. the UK, South Africa, Japan and Germany constitute the top five countries (CIETT & BCG, 2011). Over the 1990's, temporary agency work doubled in most European Union countries and in some (Scandinavia, Spain, Italy and Austria) increased five-fold (Neugart & Storrie, 2006). In 2006, it was estimated that 1 to 2% of total employment in the European Union was in the TWA sector, and a significant proportion of this is in ed jobs (Arrowsmith, 2006). In the United States, between 1990 and 2000, employment in the U.S. temp industry nearly tripled, accounting for 10% of total national employment growth (Hatton, 2011). Recent American figures show that temporary help services employ over 2.5 million workers across a range of sectors, accounting for slightly under 2% of total non-farm U.S. jobs (Bureau of Labor Statistics, 2012). On average, 15% of U.S. firms use agency staffing in a given year (ASA, 2012) and 81% of companies globally have used agency work at some point in time (CIETT & BCG, 2011). Internationally, 10 private multinational employment agencies account for 28% of total agency revenue worldwide, with Adecco being the market leader with \$21.3 billion in total annual sales, followed by Manpower (\$18.9 billion), and Ranstad (\$18.8 billion) (CIETT, 2012).

The 2009 recession marked an important growth period for the temporary work agency sector. An American Staffing Association analysis of U.S. Bureau of Labour Statistics data shows that from June 2009 to July 2012, U.S. staffing companies added more than 786,000 jobs to their payroll (ASA, 2012). This represents more than one-fourth of net employment gains since the 2009 recession ended (ASA, 2012). In Europe, the employment services sector provided at least 900,000 new jobs between 2009 and 2011, in addition to the 3 million agency workers that remained employed during the same period (CIETT & BCG, 2011).

The recovery from the global recession since 2009 also shows a new pattern in the use of TWAs. Typically, during a recession, temp positions are the first to be eliminated and post-recession, temp workers are the first to be rehired while employers create new permanent positions (ASA,

2012). However, following the global recession, North American companies continued to lease temporary workers while creating fewer permanent positions than in past post-recession recovery periods (Manyika et al., 2011, June).

## **Temporary agency workers**

### **Worker profile**

Internationally, TWA workers work on average about half as many weekly work hours as full-time permanent employees (CIETT, 2012). In the European Union, a significant proportion of the temporary agency workforce is employed in low skilled jobs (Arrowsmith, 2006), and agency workers have a particularly strong presence in services and manufacturing sectors (CIETT, 2012). European temp agency workers are relatively young, with 57% less than 30 years of age compared with 55% outside Europe (CIETT, 2012). International figures suggest that the temporary agency sector is segmented by gender. For instance, services oriented markets (such as Sweden) tend to employ more women, whereas industrial markets (such as Germany) tend to employ more men (CIETT, 2012).

In Canada, according 2004 statistics, TWA workers are most likely to work in processing, manufacturing and utilities jobs (43%) and in the management, administrative and other support industry (48%). Agency workers in Canada are less likely than other workers to have completed high school or have a university degree (Fuller & Vosko, 2008). They are also older than other types of temporary workers (seasonal, contract or casual workers) with 32% being 45 years of age or older. The gender split is relatively even (Fuller & Vosko, 2008). Although figures are not available for how many immigrants are engaged in TWA work, they appear disproportionately represented among temporary contract and casual workers (Fuller & Vosko, 2008).

### **Statistical invisibility of temp agency workers**

Currently, there is no reliable data source in Canada on agency workers, including how many temp agency workers exist, where they are placed, what work they do, or how much they earn. This statistical layer of temp worker invisibility creates a gap in knowledge about the temporary work sector which prevents needed attention to injury prevention.

The Labour Force Survey is a monthly Statistics Canada survey of approximately 54,000 households. It provides information on general labour market trends by industry and occupation, hours worked, participation rate and unemployment rate. Until 2007, jobs obtained through TWAs constituted a sub-classification of temporary jobs in the survey. Since then, TWA jobs have been combined with “term or contract” sub-category.

Before January 2007, employees hired through help agencies also constituted a separate temporary job category in the Labour Force Survey. However, this category

was often confused with contract jobs and was therefore removed from the survey. (Galarneau, 2010)

A second Statistics Canada survey, the annual survey of service industries, produces economic statistics for different Canadian industries, such as the Employment Services Industry (NAICS 5613), for which temporary help services is a sub-industry (NAICS 561320). The data are used to monitor industry growth, measure performance, and make comparisons to other data sources to better understand this industry (e.g. sales resulting from temp staffing, sales by client type). In the past, the survey provided information on the number of temporary agency workers and revenues by placement type (e.g. administrative, industrial and trades, technical) (Statistics Canada, 2003). However, the only information provided in the most recent survey results for 2010 is the percent of total industry sales resulting from temporary staffing (Statistics Canada, 2010a).

### **Why workers engage in TWA work**

Studies find that although some TWA workers seek agency work because they desire flexible employment conditions, many engage in this work for involuntary reasons—that is, they have been unable to find more stable employment (European Foundation for the Improvement of Living and Working Conditions, 2007; Galais & Moser, 2009).

Workers participating in our study sought employment through TWAs for a variety of reasons. Some said they worked through agencies because it suited their flexible lifestyle (students, retirees). However, in interviews, the ‘retirees’ described needing income. It is possible that these participants offered a face-saving, socially acceptable reason for their temporary agency employment. Most of our worker participants described engaging in TWA work because they had exhausted other employment options. These included new immigrants, people with uneven work histories (due to injury or addictions), and workers with a criminal record. In their experience, the agencies did not turn them away and could provide fairly regular work.

### **TWA work and OHS Risk**

Studies across jurisdictions show that temporary agency workers have a relatively high rate of work-related injury (Fabiano, Currò, Reverberi, & Pastorino, 2008; Hébert, Duguay, & Massicotte, 2003; Silverstein, Viikari-Juntura, & Kalat, 2002). In the Netherlands and Germany, agency workers accounted for as much as 13% of occupational accidents, although they comprise only 3% of the jobs (EFILWC, 2007). In Finland, workplace accident frequency for agency workers is on the increase despite a general downward trend in main industries (Hintikka, 2011). Temporary agency workers in the USA have higher workers’ compensation claim incidence rates than those in standard employment arrangements (Park & Butler, 2001; C. Smith, Silverstien, Bonauto, Adams, & Fan, 2010), longer claim durations (Park & Butler, 2001), and double the incidence rate in the construction and manufacturing sectors (C. Smith et al., 2010).

In Québec, TWAs providing manual labour had the highest prevalence of compensated occupational injury of all employment sub-sectors, for the years 1995-1997 (Hébert et al., 2003), and the injury rates for that employment sector actually increased in 2000-2002 (Duguay, Massicotte, & Prud'homme, 2008).

Overall, research suggests that across national contexts temporary agency workers have more work accidents than their counterparts in permanent employment and in some forms of work experience a significantly higher accident rate than their non-agency peers.

## II. STUDY METHOD

### Qualitative Research Design

This research study used qualitative methods, which are appropriate for examining experience, process, and social relations, as well as exploratory topics about which little is known. Qualitative research designs help explain the nature of relationships between events and can show how behavior occurs in relation to social, legal, economic and other contexts. Qualitative research is especially valuable when the core categories or variables of analysis are not known or are inadequately understood. In this case, little was known about how temporary workers, client employers, or TWAs manage occupational health and safety. As well, we had little understanding of the mechanisms that make temp agency work safe or risky.

The study design combined elements of three qualitative approaches: grounded theory, discourse analysis (Grant, Hardy, Osrick, & Putnam, 2004), and document analysis (Rapley & Flick, 2008). Grounded theory directed us to systematic data collection and analysis approaches. Iterative data collection and analysis processes allowed new sub-questions to be developed as we learned more about our topic. Integrity and quality of data collection and analysis were assured by systematic procedures for data coding, thematic analysis, and other checks. Discourse analysis provided us with a theoretical lens to interpret data. It alerted us to consider how and why people position themselves and their accounts as they do. Finally, the document analysis provided OHS legal and policy context for TWAs and workers. This allowed us to undertake a legal-policy analysis of relevant documents including legislation, case law, and policy governing Ontario temporary work agencies and their requirements for workplace health, using classic legal methodology (see Figure 1).

**Figure 1 Data collection**





## Participant Sample and Recruitment

Our research design allowed for a broad enquiry of work life and occupational health experiences of the multiple work parties in the TWA sector. The study was conducted between January 2010 and December 2012. Interviews and focus groups were conducted with 64 participants between January 2010 and August 2011. Participants included 19 workers employed by TWAs, 12 client employers who regularly hire labour from TWAs, 22 temporary agency management staff, and 11 key informants with expert knowledge of workers' compensation and OHS legislation and practice (see Table 1). Participants were recruited from 4 locations in Ontario: Toronto, Brampton, Hamilton, and Kitchener-Waterloo. A small number of participants were also recruited from other surrounding areas (Mississauga, Burlington, and Kingston).

**Table 1 Overview of Participant Sample**

Participant category	Description of industry/occupational focus	Total # of participants
<b>Temporary Workers</b>	Low-skilled/wage jobs such as general labour, warehouse work, truck driving, and construction, with some medium-skilled jobs, such as clerical work.	<b>19 workers</b>
<b>Temporary Work Agencies</b>	Types of temporary staffing services included: administrative and clerical, general labour, hospitality, industrial and manufacturing, professional staffing, retail, special events, transportation, warehouse/logistics.	<b>22 TWA staff (17 agencies)</b>
<b>Client Employers</b>	Industry sectors included: beverage manufacturing, construction, healthcare, not-for-profit, property management, restaurant, transportation, warehousing/logistics, waste management.	<b>12 CE staff (11 workplaces)</b>
<b>Key Informants</b>	Workers' compensation policy makers, occupational health & safety regulators, workers' compensation policy and legal advisors, safety inspector, TWA industry representatives, worker advocacy centre	<b>11 key informants</b>
<b>TOTAL PARTICIPANTS</b>		<b>64</b>

We purposively focused the worker sample on those engaged in low-wage jobs such as general labour, warehouse, and service work. The rationale was that these workers are more vulnerable than highly skilled and employable TWA workers, such as nurses or IT professionals. Workers were recruited for experience working for one or more TWAs within the previous 12 months in a range of unskilled and semi-skilled jobs, with and without related injury experience, and across a variety of agencies and locations. They were solicited via free internet classified advertisements (Craig's List, Kijiji) inviting potential participants to share “what it is like to be a temporary worker” and to discuss “how temporary work agencies handle workplace health and safety issues”. Workers were also recruited via the ‘snowball’ method, whereby one participant suggested another to be included in the study and through referral by community organizations providing support to injured workers. Workers were provided with a \$50 honorarium to compensate them for participation and travel costs. Of the 19 workers (13 male, 6 female) who participated, 11 reported having been injured while working for a temporary work agency, and 7 had a related workers’ compensation claim (See Table 2).

**Table 2 Temporary Worker Characteristics**

<b>Demographic characteristics</b>	<b>Relevant work injury history</b>	<b>Types of temporary jobs held</b>	<b>Work locations</b>	<b>Workers</b>
Participant age:	11 (57%)	Admin/clerical work	Brampton	13 male
Under 30 (7)	injured	Assembly/factory work	Hamilton	6 female
31-40yrs (3)	while on a	Cleaning	Kingston	
41-50yrs (3)	temp	Construction	Toronto	
51-60yrs (4)	assignment	Customer service	Kitchener/Waterloo	
Over 61yrs (2)	7 (36%)	Driving		
Level of education:	reported	Event staffing		
Some high school (2)	having a	Food preparation		
Completed high school (7)	WSIB claim	Forklift operation		
Some postsecondary (2)		General labour		
Completed postsecondary (8)		Hospitality		
		Light industrial		
		Meat packing		
		Order picking/packing		
		Warehousing/logistics		

Temporary work agencies were purposively selected for a range of agency sizes and locations, and for offering unskilled and semi-skilled temporary labour. We sought agencies similar to

those described as being the employment source of workers interviewed. Agency management staff were recruited via cold calling; agencies were identified via online advertisements or by other participants. Recruited were staff from 6 multinational, 2 regional (defined as national or provincial with 3 or more branches), and 9 local (defined as 1 or 2 offices) agencies whose labour services included administrative and clerical, general labour, industrial and manufacturing (e.g. assembly/factory work), warehousing and logistics (e.g. forklift operators), and transportation (e.g. truck drivers) (See Table 3 for full range).

**Table 3 TWA Characteristics**

<b>Types of TWA management staff interviewed (N=22)</b>	<b>Types of TWAs by geographic scope (N=17)</b>	<b>TWA locations</b>	<b>Types of temporary staffing services offered to clients</b>
CEOs	6 multinational	Brampton	Administrative and clerical
Agency owners	2 regional	Burlington	General labour
Risk management specialists	9 local	Hamilton	Hospitality
Office managers		Kitchener/Waterloo	Industrial and manufacturing
Recruiters		Mississauga	Retail
		Toronto	Special events/promotion
			Transportation
			Warehousing/logistics

Client employers were recruited via cold-calling. Attempts were made to solicit participation of operations managers or direct onsite supervisors (rather than human resource staff) as they would have direct knowledge about everyday work and supervision conditions of temp agency workers. Client employers were also purposively chosen for the types of worksites described by the workers and for having hired temporary agency labour within the previous 2 years. Included in the study were 11 client employer workplaces, which covered a variety of industries and occupational sectors, including beverage manufacturing, construction, healthcare, transportation, waste management, general warehousing, among others (See Table 4).

Key informants were identified via the snowball method and for their direct knowledge of temporary agency work and detailed understanding of related occupational health and safety and workers' compensation practice and legislation. In total, 11 key informants participated in the study: 3 workers' compensation regulators, 2 occupational health and safety regulators, 2 industry representatives, a workers' compensation policy advisor, an occupational health and safety legal advisor, a workplace health and safety inspector, and a worker advocate (See Table 5).

**Table 4 Client Employer characteristics**

<b>Types of CE staff interviewed (N=12)</b>	<b>Types of CE worksites by industry sector (N=11)</b>	<b>CE worksite locations</b>	<b>Types of temporary jobs requested from TWAs</b>
Vice President	1 Beverage	Brampton	Administrative and clerical
Senior managers	manufacturing	Mississauga	
Human resource personnel	1 Construction	Kitchener/Waterloo	Healthcare workers
Site supervisors	2 Healthcare	Toronto	Industrial and manufacturing
	1 Not-for-profit		Warehousing/logistics
	1 Property management		Waste management
	1 Restaurant		
	1 Transportation		
	2 Warehousing/logistics		
	1 Waste management		

**Table 5 Key Informant Sample**

<b>Total # of KIs (N= 11)</b>	<b>Area of Expertise</b>
3	Workers' compensation regulators
2	Occupational health and safety regulators
1	Workers' compensation policy advisor
1	Occupational health and safety legal advisor
2	Industry representatives
1	Workplace health and safety inspector
1	Worker advocate

## **Data Collection and Management**

Focus groups included 2 to 6 participants and lasted approximately two hours, while one-to-one interviews normally lasted 60 to 90 minutes. Toronto worker focus groups were conducted at the Institute for Work & Health, and other focus groups were held at conference centres in sites visited. Interviews with TWA staff and client employers were mostly conducted at their worksite; interviews with key informants were typically conducted by telephone or at their office. Questions for workplace parties focused on experience of work with or for a TWA, pros and cons of working with a TWA/temporary workers/ client employers, communication and

contractual arrangements, labour challenges, work and health issues, and injury prevention and return to work management. Interviews with key informants focused on elaboration of topics arising in the findings, such as the legal policy framework governing TWAs, regulatory enforcement challenges, and OHS liability. All interviews were audio-recorded, transcribed verbatim, and stored on QSR NVivo 8, a computer software program for the management of qualitative data. Detailed field notes were also written after each interview by the interviewers to describe the encounter, note their observations of the meeting context (location, interaction and behaviors), and record analytic insights.

Legal documents were also data for this study. Two legal experts on the research team conducted a legal analysis of the Ontario Workplace Safety and Insurance Act (WSIA), the Occupational Health and Safety Act (OHSA), Workplace Safety and Insurance Board (WSIB) policy, and case law on issues related to workers' compensation and occupational health and safety as it relates to TWAs in Ontario. The main questions asked were: What are the relevant issues in workers' compensation law in Ontario that apply in a particular way to temporary work agencies (e.g. experience rating set-up)? What are the OHS implications of the current policy situation (e.g. who is the employer)? Together with researchers' field notes and analysis notes, as well other documentary data (e.g. TWA promotion materials, media), this legal analysis provided analytic context for the interpretation of participant accounts and helped guide interview data gathering.

Publicly available documentary data, such as TWA promotional material, media articles about TWAs, TWA website content, temporary worker blogs, and public debates over Bill 139<sup>1</sup> were also collected throughout the study. These material were useful for situating participant accounts and for understanding TWA discourse about their services.

## **Data Analysis**

We began the study by gathering and analyzing worker interview data. In turn, this informed subsequent data gathering with the other parties. The legal-policy analysis helped identify practice variations in relation to existing law and policies, and provided additional analytic context for the interpretation of participant accounts. The analysis of documents (media reports, promotional materials), together with the legal-policy analysis allowed the team to be sensitive to the positioning of participant discourse in the context of social, economic and legal conditions.

Field notes assisted the analytic reflection process for this study (Huberman & Miles, 1994; Lofland & Lofland, 1995). These notes were written immediately after each interview or focus group, and allowed the researchers to systematically and jointly reflect on the data and emerging

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<sup>1</sup> Bill 139, Employment Standards Amendment Act (Temporary Help Agencies), 2009. Royal Assent received Chapter Number: S.O. 2009 C.9

findings. We recorded how the new data compared to that already collected, identified new questions, and knowledge gaps.

A coding process was established for categorizing data in interviews. Key codes were developed by the team, following an independent review of several interviews. Once an initial set of codes was established, each interview was coded by varying pairs of two members of the research team. The codes included ‘descriptive’ codes, which reflected issues within the immediate domain of the interview questions, and also ‘analytic codes’ that captured new data not initially framed by the interview questions. Some examples of analytic codes are “resistance” and “vulnerable.” Descriptive codes included “injury”, “prevention”, “risk”, and “return to work”, among others. As coding progressed, codes were added or adjusted according to the evolving understanding of the dataset. Throughout the coding process, investigators met after coding each interview to compare coded segments and achieve consensus about code meanings. Finally, a written summary of each code for each interview was prepared to facilitate in-depth analysis of themes and findings. These coding notes built on the field notes and identified distinctive features of each interview. They also identified analytic issues and comments, such as how aspects of this interview compared with others. Finally, in-depth analysis occurred for all code segments. Codes were analysed for their within-category variety, and then across each other for inter-code analysis.

A core team (project PI, co-Is, coordinator, research assistants) met bi-weekly to discuss emerging findings, exchange analytic insights, and plan future data collection needs. Whole-project meetings (that included Katherine Lippel and legal RA Natalia Werhun, based in Ottawa) occurred approximately three times yearly.

Finally, a 9-member multi-stakeholder Advisory Committee guided the research. On this committee were representatives from Ministry of Labour, WSIB, Office of the Employer Adviser, Office of the Worker Adviser, Toronto Workers’ Health and Safety Legal Clinic, the Workers Action Centre, and Workplace Safety and Prevention Services. The Advisory Committee provided feedback and guidance at four key stages of the study: at the start of the study on the initial research design, mid-way through to reflect on emerging findings, next to review key policy implications, and at the close of the study to discuss the final report and next steps.

## **Ethical Considerations**

Ethical approval for this study was obtained through the University of Toronto’s Research Ethics Board. All names appearing in this report are pseudonyms. Potential identifiers, such as workplace locations, names, or other personal information, have been altered to preserve anonymity.

Key ethical considerations were voluntary participation, confidentiality and anonymity. Recruitment procedures were managed so that they did not hinder participants' privacy or employment status. As well, the recruitment was not influenced by participants' own preferences about who we should meet. For instance, we did not recruit workers through TWAs or client employers, and did not recruit client employers through TWAs, or vice versa. As well, was taken in all communications to minimize identifiability of all informants.

Participants were informed of their right to refuse to answer any of the questions posed and to withdraw from the study at any time. No participants asked to leave the study or to not have their data included.

Study data is available only to the immediate research team (not to Advisory Committee members). All interview transcripts were reviewed for accuracy and subjected to a confidentiality procedure whereby all potentially identifying information was replaced with generic identifiers.

### **III. WHY WORK IS SO RISKY FOR TEMP AGENCY WORKERS**

This section provides reasons why temp agency work is so risky. While previous large-scale studies have shown that temp agency workers have more occupational injuries than regular workers, the mechanisms for this elevated risk have been unclear. Our study of how TWAs manage OHS, drawing on in-depth interview accounts of the three key parties (temp agencies, client employers and agency workers) and on analysis of law and policy documents, has provided an understanding of 8 key mechanisms that we propose drive elevated injury risk for TWA workers in Ontario: 1) structural inducements in Workplace Safety and Insurance Act (WSIA) and 2) Workplace Safety and Insurance Board (WSIB) rate groups that encourage client employers to outsource risky work to agencies; 3) limited TWA employer liability for unpaid WSIB fines; 4) the ‘outsider’ status of agency workers at client employer worksites; 5) the propensity for job mismatches; 6) the uncertainty of dual employer responsibility under the Occupational Health and Safety Act (OHSA); 7) the inherent employment insecurity of agency jobs and how this affects risk exposure and injury reporting; and 8) TWA workers’ lack of a Joint Health and Safety Committee forum.

#### **1. Worker’s Compensation rules encourages client employers to outsource riskier work to temp agencies**

Under the Workplace Safety and Insurance Act (WSIA), the temporary work agency is considered the sole employer of the workers they send to work for a client business. Under this arrangement, WSIB’s injury prevention incentives, as applied in experience rated workers’ compensation premiums, are applied to the agencies. Therefore temp agency worker accidents appear on the temp agency’s workers’ compensation record, and not that of the client employer. These were important *structural incentives* for client employers to hire temp agency labour for work that might otherwise affect their own accident record. When a client employer has a low accident record, this also reduces the possibility of receiving a proactive inspection visit from a Ministry of Labour inspector, as these are triggered by high workers’ compensation accident rates. As described by this agency owner, client employers who engage in this practice could appear so safe as to be given safety awards:

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, regional TWA)



As described by a workers' compensation regulator, client employer liability divestment played a key role in the attractiveness of the TWA sector:

There's a reason why there's a relationship [between TWAs and client employers] and it has very little to do in most cases with them...not wanting to do the HR [human resources] function, the way that temp agencies explain it. Most of it has to do with divesting themselves of liabilities. (Philip, workers' compensation regulator)

Indeed, an early observation in the study was how both temporary agencies and client employers described the shifting of dangerous work to agencies.

To be frank, clients hire us to have temps do the jobs they don't want to do. (Maurice, risk management specialist, multinational TWA)

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, worksite supervisor, client employer)

An agency manager suggested that client employers hire temporary labour to do work that is actively refused by their permanent staff:

Definitely the managers in a plant or in a warehouse know who are the full-time employees, who are the temporary employees. And they know if they go to a full-time employee, he is going to say, "Hey I am not doing that job, I am not trained for it"...And you know, there's all sorts of repercussions for that manager...for pushing someone into that position. But the temporary employee, "Hey I will use them no one is going to know the difference"...9 out of 10 times he will be fine... "It's not my problem". (Jason, vice president, local TWA)

In this case, the client employer practice of hiring TWA workers for risky work resulted in a temporary worker fatality:

There was a steel container of plywood sheeting came from [abroad]...and then 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 from the temporary agency. And then when the doors were open, when they were handling the material, the load came apart and killed the guy. (Joseph, workplace health and safety inspector)

In addition to structural incentives to push the riskier work to temp agency workers, there were also *social reasons*. Temp agency workers were figuratively ‘at the bottom of the totem pole’ in workplaces and in some cases permanent workers could allocate tasks so as to relieve their own burden, directing the heavy work to temp workers.

You get more respect if you’re a full-timer. And then the temps are, like, they have to do the bad, dirty work. In the factory I was in... they...make you lift more boxes. (Sally, Toronto agency worker)

When I worked at the warehouse...there was a lot of heavy boxes...So, like...they know, they [the permanent employees] will try and be smart....– Like, if there’s two trucks, they will tell the temporary agencies to do...the heavy. (Jalil, Toronto agency worker)

In a case where temp workers were assigned to a recycling truck route, the work of the permanent workers became lighter. Although a recycling job involved working in pairs and taking turns doing the driving and the loading work, when temp workers were present this rotation did not happen. Instead, the permanent staff did all of the driving and the heavier loading work was allocated to the temp agency worker:

I: So the temp worker, what jobs did they do? Do they do the driving or are they on the back of the truck?

P: We don’t have any temp drivers. They’re all doing the physical labour like the loading of the materials into the trucks. (Drake, worksite supervisor, client employer)

Temporary workers were aware that they were being asked by various parties to do the undesirable work. They also knew that, unlike permanent workers, they could easily lose their job assignment if they complained:

See, when you’re coming from the agency, if there’s any work which is strenuous work, which is more heavy, you’re going to do it....Don’t think their permanent guy who is working there is going to it. That’s why they bring you in, because nobody wants to do it there. (Jeff, Toronto agency worker)

It was interesting to observe that, while client employers had incentives to outsource risky work to temp agencies, they were also insulated from viewing the human consequences of this practice. If an agency worker is injured on the job, it is the responsibility of the agency to manage the injury and the client employers might never know of the accident. The client may simply know that a worker left and was replaced by another worker the following day.

When I was working at...one of the warehouses there used to be a problem with the people... lifting heavy boxes... The temporary workers would always have a problem with that and especially the older gentlemen. And one time, one guy tried to lift... a very heavy box.... Everybody heard a crack....I think he hurt his back. He just fell back and starting yelling and everybody came and just escorted him out and then they called an ambulance... I never saw that guy again. (Jalil, Toronto agency worker)

We heard constantly about [agency] guys not coming back.... We'd ask, "What happened to so and so?"..."Oh, he's out, man, he hurt his back". (Darren, worksite supervisor, client employer)

Even if the client employer did know of an agency worker becoming injured while working for him or her, structural arrangements for accident responsibility mean that he or she would not receive further information about the incident and would therefore remain unaware of the extent of the injury. For instance, Stephen knew that the work he assigned to temp agency worker was "too hard" and created back strain, but he didn't know what injuries ensued. He knew simply that this led temp workers at his site to frequently "walk off the job":

I have had a couple of [agency] guys walk off the job and go home because it was too hard for them.... Unfortunately back strains are usually done by guys in their 20s. (Stephen, worksite supervisor, client employer)

Ultimately, lacking this knowledge of injuries and injury severity, the client employer has little knowledge or incentive to improve site conditions for workers.

## **2. WSIB rate groups encourage client employers to outsource riskier work to agencies**

We found that the structure of WSIB rate groups provided a financial incentive to client employers in higher risk rate groups to outsource this risky work to temp agencies. For a number of rate groups, TWAs pay lower workers' compensation premium rates than client employers (See Table 6). For instance, employers with "wooden pallets and boxes" work were assessed in a high rate group because of the sector accident rate, in this case \$6.83 per \$100 payroll in 2011. In contrast, the rate group for the agency ("supply of labour-non clerical") was \$4.83. This \$2.00 gap in premium rates for the different rate groups makes both payroll and workers' compensation premiums relatively inexpensive for the temp agency employer. It also means that the same accident will cost the agency less than the client employer. When TWAs pay lower workers' compensation premium rates than client employers, they can build their own lower rate into the

contract price. Unfortunately, this arrangement belies the logic of having varied WSIB premium rate groups. That is, higher risk sectors pay higher WSIB premiums precisely because of risk of the work and this higher rate is meant to encourage these employers to create safe work environments. However, when temp agency workers are placed side by side with permanent workers in, for instance, “wooden pallet and box” work, they become a “discount site” for work accidents.

**Table 6: Selected WSIB sector premium rates**

<u><b>Ontario Rate Group</b></u>	<u><b>Description</b></u>	<u><b>2011 Premium Rate (\$)</b></u>
<u>929</u>	<u>Supply Of Non-Clerical Labour</u>	<u>4.83</u>
<u>033</u>	<u>Mill Products And Forestry Services</u>	<u>8.42</u>
<u>036</u>	<u>Veneers, Plywood And Wood Preservation</u>	<u>5.14</u>
<u>119</u>	<u>Other Mines</u>	<u>6.40</u>
<u>134</u>	<u>Aggregates</u>	<u>6.24</u>
<u>159</u>	<u>Livestock Farms</u>	<u>6.78</u>
<u>312</u>	<u>Wooden Boxes And Pallets</u>	<u>6.83</u>
<u>496</u>	<u>Concrete Products</u>	<u>5.19</u>
<u>689</u>	<u>Waste Materials Recycling</u>	<u>5.90</u>
<u>711</u>	<u>Roadbuilding And Excavating</u>	<u>5.06</u>
<u>719</u>	<u>Inside Finishing</u>	<u>7.19</u>
<u>728</u>	<u>Roofing</u>	<u>14.16</u>
<u>737</u>	<u>Millwrighting And Welding</u>	<u>6.60</u>

Costs of compensable injuries are attributed to the employer's account, in principle to the TWA's account, given that the WSIA considers them to be the employer. However the WSIA provides a ‘transfer of cost’ mechanism allowing employers to avoid such attributions if others are responsible by applying for a transfer of cost. It could therefore be argued that this cost of work accidents would be returned to client employers through the “transfer of cost” mechanism.

However, we observed that only the smaller agencies tend to engage in ‘transfer of cost’, and only did so as a last resort when the agency’s financial viability was at stake:

We’ve run into cases where ... somebody is brought into move boxes around in the warehouse. And some manager comes along and says, “Hey, we need some guy to come over and help with this machine over here and do some of this stuff.”... This kid was only... [young] and he got his whole [limb] crushed in this machine. ....The liability was put towards [us] and... [we] had to fight that and eventually...overturned it... But it took... substantial resources, in terms of legal and management expertise to make that happen ... And...we lost them as a client, which...we anticipated. (Jason, vice president, local TWA)

We found that engaging in ‘transfer of cost’ was a business decision for agencies, rather than a straightforward issue of appropriate allocation of accident responsibility. Most TWAs in this study did not transfer cost (especially not the multinational agencies) even when possible. This appeared to be due to the possibility of net financial loss through terminated business with the client.

I: Have you ever tried to transfer the cost...to the client employer?

Jeremy: No...Because it’s good business. What’s the first advice to you as my client “Oh, and we’re going to transfer the cost to you?” You know what they’re going to say?/ Jessica: They will go to another agency. / Jeremy: “See the door, out.”.... “Good-bye”. And you’ve got \$25,000 in bills, invoices, etcetera. They’re not going to get paid. (Jessica and Jeremy, recruiters, local TWA)

Agencies took a broad view on costs of workplace accidents, considering them as business expenses related to “tomorrow’s business relations”:

[Transfer of cost] will undermine if not destroy... our customer relationship and so there is no economic incentive. You have to look at the economic model and balance it with your moral model. You have to say, “Is this customer going to fix their workplace? So, therefore I feel...it’s morally acceptable for me to continue to do business with them tomorrow because they’re going to fix the workplace.” And then if you try to transfer the claims cost of yesterday’s claim, you will undermine your relationship of tomorrow’s business relations. (Simon, industry expert)

The threat of transfer of cost appeared to be remote for client employers. For instance, even when the following client employers saw themselves as directly responsible for an injury cost, they knew that the agency would not risk losing their contract by directing financial responsibility toward them:

We have way too many casualties of people in this industry...trucks rolling over people' legs.... Unfortunately in a lot of cases it's the temp agency worker that happens [to] .... We've killed people within our own company.... We're aware they [temp agency] could probably try to transfer cost to us...It's as simple as us picking up the phone and saying, "Okay we're going to get another agency"...It's probably not in their best interest to try that". (Drake and Gordon, operation managers, client employer)

### **3. The structural incentive of limited employer liability for unpaid fines**

A third structural incentive for client employers to transfer risky work to temp agencies is the relative ease with which they are able to avoid unpaid WSIB and OHSA premiums and fines. Agencies can be run with very little physical infrastructure, and in the face of very high fines or surcharges, smaller agencies can easily close and re-open:

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)

Under the WSIA, company directors are accountable for monies owed to the WSIB. However, they can escape responsibility for these debts if the business shuts down and the directors have no identifiable assets. Unfortunately, it is the most catastrophic injuries, such as a worker death, which can prompt such agency closure:

[TWA name]...went out of business because of the fatality. And then I went back, they weren't at the location. So then I got hold of someone in the Compensation Board and... they ... said, "Oh... they're not [former name] anymore, they're now [new name]. They just went with the initials and they changed the director of the company and they moved down the hall". (Joseph, workplace health and safety inspector)

The Ontario Employment Standards Act would hold these employers legally responsible through the 'associated employer' clause (Part III, 4, 1a). However, the WSIA and OHSA lack these employer accountability mechanisms. In turn, this facilitates risk taking among some employers, including those in the temp agency sector.

#### **4. Temporary workers can stand outside of informal safety knowledge and access to best equipment**

A fourth way that the structural arrangement of agency work created OHS risks was that agency workers faced the regular hazard of not knowing the worksite. For instance, they would not know where things are located, the work processes, social norms about work pace and behavior, or who had what knowledge or information. They would not know their way around new worksites and described “stumbling and falling” around the site:

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, Brampton agency worker)

Agency workers stood outside of the established social environment in the workplace. Sometimes, they felt actively disliked by permanent workers, who appeared to see the temp workers as a threat:

[Sally] Sometimes the full-timers are threatened by you. They think we might you know, take their job... [Jalil] They don't like you. (Sally and Jalil, Toronto agency workers)

Hostility by permanent workers to temp agency workers was also noted by a client employer, who described how at his workplace permanent workers engaged in a deliberate strategy of sabotaging agency worker tasks, such as hiding needed materials. The permanent workers actively withheld local safety knowledge and strategies, which increased the danger of agency workers' tasks:

There's a way to grab. This [agency] guy is grabbing...the [product]...and then throwing. Well you're carrying the dead weight...We had all learned...that if you grabbed it a little lower...the [product] would start to spin...It gives us momentum... But we never showed anybody [agency staff] any of that stuff, not how to handle [the product]...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, client employer)

At this site, permanent workers also reserved the best equipment for themselves, in this case exposing agency workers to risk by leaving them with only manual jacks with which to move material at heights:

So, [the logistics management company representing the temp agency] had approached us, “Well we want forklifts”. We wouldn’t give them forklifts, we would give them manual hand jacks. ...These guys are trying to pull beds, racking systems ...that are 4 feet by 8 feet with 2 to 4 foot ends on them with 70 [product units] on them. You’ve got 2 [agency] guys trying to pull them out of a dock with a manual pallet jack right? (Darren, worksite supervisor, client employer)

Differential access by temp agency workers within the same ‘job, to proper equipment was also described in other work contexts. For instance, at Dalia’s call centre, the permanent workers were provided with a hands-free headset, but temporary workers had to use regular telephone handsets, which required pinching the phone to the shoulder and caused Dalia to have neck pain:

At the...call centre...the full-time people would get the headsets and then they could type because their hands would be free. But then we would have like the phone and then there’s a part in the survey where...you’re trying to type and stuff and you’re having to go like this and this [pinching head to shoulder]. Like it really hurts here [points to neck]. (Dalia, Toronto agency worker)

## **5. Temporary work arrangements create risky mismatches between workers and job requirements**

Employers who hire workers directly can assess if the worker is suited to the task, but assessment of work suitability becomes difficult under the structural arrangements of a three-way employment relationship. A fifth structural OHS risk for agency workers is that temp agency staff who are not intimately familiar with a client employer’s worksite and job tasks are the ones choosing which workers to send to the client employer. Agency staff might have a job description such as “general labour” or “moving”, but they may seldom know the exact conditions of the job. Once workers arrive at a site, the client employers may need them to begin work immediately, regardless of their ability.

Indeed, speed was regularly an element for some temp agencies. Client employers would call agencies to request labour on very short notice, which exacerbates the problem of ‘fit’ between the worker and the job. Darren, a worksite supervisor, described the immediate need for temporary workers during a union strike which led the agency to “just throw people at the contract”.

In the beginning it seemed like they [TWAs] were just throwing people at the contract, “Whoever we can get there because we’re getting \$16 an hour per worker [from the CE] ...and we’re paying them [the workers] minimum wage [\$10.25/hr]”. (Darren, worksite supervisor, client employer)



Penny, a client employer, describes how an agency's ability to provide workers "on a minute's notice" is what makes them appealing:

I: What is it that makes hiring temp workers appealing? Why do you hire them?

Penny: For the most part it's that quick turnaround and they're able to meet emergency needs...A lot of agencies have very qualified resources on a minute's notice so that sort of thing...we enjoy from them. (Penny, staffing specialist, client employer)

The urgent conditions of speed placements meant that a client employer would be unlikely to turn away a much-needed worker, even if the worker appeared unsuitable. This led to situations such as the following where a woman was placed on a factory line for which she was too short:

I'm too short...They send me to the paint line and I am...left handed. Of course you put me on the wrong side...and I am looking and I am thinking "Holy Lord, here we go". So, out come the boards...I am swiping and I am watching this conveyor belt going, "I am going down the conveyor belt with the lumber" ...The guy [workplace supervisor] is looking at me...paint all the way down the front of me...and I said "Look...I can't do this paint line because I am too short" and he looked at me and then gave me a really ugly look...and he just goes. (Jackie, Waterloo agency worker)

Other situations included older workers being sent to worksites for heavy lifting work to which they were ill suited.

Jed: They tell you it's going to be general labour...but beyond that you don't know...[if] it's going to be the heavy or light...

Max: I've hired temps and because of the nature of our work because there's a lot of physical work and we're talking...dumping manually 15 to 30,000 kilos of product in an 8 hour shift...So when we're ordering someone, we want someone who is physically fit... And on a couple of occasions they've actually sent me in people who are as old as my dad. (Jed, agency worker with temp agency recruiter experience and Max, Waterloo, agency worker with client employer experience)

What is surprising about Max's experience as a client employer is that his company had a TWA staff member permanently placed at his workplace to directly address their needs. However, even with this client arrangement, an inappropriate worker was sent for the job because he had been recruited and assigned by the TWA staff member's colleague at the agency office.

These are examples of risks faced by workers under the structural arrangements of temp agency hiring, when the person assigning a worker to a job (agency recruiter) is not the person who knows the job (client employer).

## **6. The uncertainty of dual employer OHS responsibility**

Under the Occupational Health and Safety Act (OHSA), client employers have a “shared responsibility” for the health and safety of workers supplied by a temporary agency (Ontario Ministry of Labour, 2006). Contractually, agencies are responsible for general health and safety training and clients are responsible for specific worksite instructions. However, in practice the coordination of shared responsibilities seemed problematic. ‘Due diligence’ language might be in the contracts between the client and the agency, without practical mechanisms to ensure that safety issues did not fall through the cracks. A sixth structural arrangement exacerbating OHS risk for agency workers is that agencies seemed to have ensured their own legally protected position, and client employers and workers in our study seemed less sure of their actual OHS obligations in day-to-day operations.

One practice of TWAs was to ask the client to engage in certain assessment procedures, without knowing if the procedures were delivered and being unable to assess the appropriateness of any delivered procedures. For instance, Kate describes giving the client employer the responsibility to evaluate the workers’ skill, thereby freeing the agency of legal responsibility ensuing from injury due to inappropriate training.

Our customer gave the candidate a written test and a practical test on the equipment and passed him. So, that if he was inappropriately working the machine that’s not our responsibility. (Kate, CEO, multinational TWA)

Similarly, another temp manager described asking the client to agree to provide workers with site specific training, but without following up about compliance:

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)

An agency manager suggests that having 'terms and conditions' in fine print sufficiently addresses the safety gap for his workers:

Between the client and us, we have the agreement, job description and so forth signed off ... This is all in the 'terms and conditions'...you know what I mean? It's not just money, it's all of it right? ...So that's what bridges the gap as far as the safety things go. So we've done our due diligence, they signed off on this as this is what they're going to be using our people for... So it's all health and safety approved. They go in and they're supposed to be managing our people... putting our people to work according to these conditions, right? (Jake, branch manager, multinational TWA)

We found that, in relation to OHSA liability, TWAs appeared to have established a protected legal position by clarifying their limited responsibility for work injury in contracts. As explained by a multinational agency CEO, agencies are responsible for safety 'oversight' but not 'workforce management'.

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)

Agencies also protected themselves by ensuring that workers "sign off" as having been prepared by the agency for health and safety challenges.

I: So, when you say, "Everybody gets the health and safety"... what is that they get?  
Margo: They get a four page pamphlet of the health and safety, you know... You're allowed to leave the assignment if it is an unsafe environment... If there are big wires hanging out or if you see boxes stacked everywhere that might fall off ... and hurt you, they have every right to refuse the assignment. So, they sign off on that and we go over that and that's pretty much it. (Margo, recruiter, multinational TWA)

[Agency workers] write a little test here which...has a combination of health and safety – WHMIS, questionnaires, then they have to sign off that they've...read [and] we've gone through this information... (Lester, owner, local TWA)

Some client employers tried to manage their own liability by building specific requests into their contracts with agencies. For instance, client employer Sarah explains how they included a TWA

liability requirement in their request for proposal (RFP) process and made TWAs responsible for ensuring that temp workers were screened for their credentials:

I: In your contract...is it stated that the agency is providing people with credentials... So they assume responsibility for ensuring that?

Sarah: Yes, and they must have insurance. That's part of the RFP...They must have as much insurance for liability. They must ensure that people are educated at this certain level if they are working in specialty areas. So, that has been written into the RFP. (Sarah, vice president, client employer)

Other client employers engaged in extra due-diligence procedures in order to achieve a layer of protection. For instance, Maggie required that temp agency workers take her firm's WHMIS test, whether or not they had already done this with the agency:

I'll go through our WHMIS test ... Generally speaking, they're in the office but at the same time we do have the hazardous materials on site.... We take them on a full tour of the entire facility so they know where their fire exits are, they know where our MSDS books are, they know where the fire extinguishers, where the fire alarms ... and stuff like that. So, we treat them in those aspects as if they were permanent full-time employees. Our attitude is that, you know, the agencies may do some of this stuff, but we want to cover ourselves as well to make sure that we've covered that. (Maggie, hiring manager, client employer)

Although some employers did more than simply pay lip service to their obligations, most TWAs and client employers sought simply to *legally clarify* their positions with respect to OHS responsibility, at least in fine print. We generally observed a lack of *practical clarity* between the agencies and client employers about the safety needs of workers once placed. For instance, this client employer saw temp agency workers as immediately 'ready to go':

I: What would you say are some of the good things about hiring temp workers?

Dana: Well...you know...they are already experienced because ... they're already coming with all their WSIB, like their WHMIS and all that is already done with them. They do their health and safety stuff at their agencies and they're eager to work. (Dana, production administrator, client employer)

Likewise, temporary workers described client employers as presuming that they required no additional health and safety instruction when they arrived at their workplace.

It's [WHMIS] pretty basic knowledge but after you did that [with the agency] there was like no training on the actual sites you went to. They [client employer] didn't...

know what you had already...They wouldn't even ask about WHMIS or anything. They'll just put you right to work. (Jalil, Toronto agency worker)

As explained by the following temp worker, who was formerly a client employer, temp workers were considered "already trained" in occupational health and safety when placed at his firm by the temp agency. At the same time, he knew that his firm's own occupational health requirement for internal workers was much more stringent than what occurred for the temp agency workers.

I hired...a lot through the temp agencies because they're already mostly trained. And that's the other biggest problem in most temp agencies...their WHMIS and [safety]. It's awful, I mean basically watch a video, you know nothing about it...When we started a new...full-time [permanent] employee, we'd take them in and they'd do 8 hours, pass the WHMIS...You've got to pass the test. Not: they're giving you the answers.... You've got to actually pay attention to what you're doing. But when a temp worker comes in, we don't do that. (Max, Waterloo agency worker with client employer experience)

The practical uncertainty among client employers about who was responsible for what in relation to OHS extended to confusion about who was responsible for providing safety equipment to the temp workers. For instance, one client employer described workers as requiring glasses and earplugs but was unsure about how these were provided to the temporary agency workers who were placed in her workplace, saying, "I think for the most part the agency will supply them" (Dana, production administrator, client employer).

Given the practical confusion about OHS responsibility allocation, and also that the agencies could do little to actively protect workers while they were on a placement site, it is not surprising that agencies focused closely on issues of legal liability.

## **7. The inherent employment insecurity of temp agency jobs and how this drives risk exposure and injury reporting**

The behavior of temp agency workers was strongly governed by their dire need for income. The low wage workers in our study described working for agencies only because they had been unable to secure more stable employment. Added to this fraught situation was the reality that, under the structural arrangements of temp agency jobs, their job placement could end at any point. A seventh structural arrangement shaping OHS risk for TWA workers is that for these workers, agency work was a last resort, which made them very compliant. They were in a weak position to challenge an employer about work conditions. If agency workers displeased the agency or the client employer in any way, they could experience difficulty gaining any subsequent placements.

It's like you could be doing nothing wrong and, if that boss doesn't like you, you're gone no matter what, even if you did nothing wrong. (Sean, Brampton agency worker)

Jalil described how, if agency workers were seen to have a poor attitude, they would not be invited back for more work:

You're easily disposable. So if you say...anything wrong or, you know, like something about your attitude, all they have to say is, "Don't come back". (Jalil, Toronto agency worker)

Client employers could send an agency worker home at any point, with their only concern being which party will pay the worker the minimum three-hours of pay:

Yeah, so if somebody came in and all of a sudden we didn't have enough work for them we pay them a minimum of I think it's 3 hours ... If it's somebody who showed up and you know, maybe was going to the washroom too many times, it's really not something that you can... totally nail and say, "This is what you were doing"... My lead hands don't have enough time to deal with something like that. We'll just pay them the minimum of 3 hours. But if it's...other things...the agency will eat the [cost]; they will have to pay the employees the 3 hours, not us. (Dana, production administrator, client employer)

Agency workers described trying to reduce their employment insecurity by accepting unpleasant work tasks that were rejected by the on-site staff:

You're most on your best behaviour. So, where the full-timers they can say "No, I am not doing it" and they can't get, they won't get fired over that because they have to pay severance pay. (Sam, Toronto agency worker)

Agency workers also tried to work faster and harder than the permanent staff. Sean described engaging in this rather desperate work behavior while knowingly being paid less than permanent staff doing the same work:

There is no security so they [agency workers] are trying to secure their position by working faster and putting in a higher performance and like, "Look at me, I am faster than this guy and I am better than this guy".... If you're not going to do it for \$12 an hour, this guy will. If you're not going to do it for \$7, this guy will. Because there's all these people chomping at the bit to try and get jobs. And you just got to diversify and try and get more skills to make yourself more of a commodity. (Sean, Brampton agency worker)

The pressure for faster work from agency workers appeared to also come from agencies, who Malek described as holding their workers to a standard of “doing three times the amount of work”:

I work for... [a parts assembly company]...The guys that were working for the agencies...were getting paid less [than the permanent workers] but they were doing 3 times the amount of work... [Permanent workers] were producing 350 to 400 [pieces] between an 8 hour shift...while the agency was producing over a 1000...What was happening was guys were coming there and... if he doesn't pick up fast, he's gone. (Malek, Brampton agency worker)

Long work hours were also a pressure for temp agency workers. Workers described being targeted for last minute overtime work and being told to accept this or else risk losing their job assignment. For instance, Max described how a client employer needing overtime staff would “go after the temps” who then risked losing their placement if pressing family needs, such as picking up children from a sitter, intervened:

One of the supervisors comes up and asks one of the guys next to me ...“Listen, your guy called in sick... Can you stay 4 hours?”...And the guy, of course he's a temp right, and ... bottom line he didn't want to stay.... So, the supervisor said, “Listen... you've got to cover first”.... The problem is that... they go after the temps first and ... all you have to do is once say, “No”. And this...guy said, “Listen, I can't do it...I've got my daughter...She's staying there until I get home and...I am sorry I can't do it”.... And they finally said to him, “Listen, if you don't stay we have to write you up”.... Which is basically... if you refuse overtime twice, you're done. You're out of there.... [I: And whose rule is that?] That's the company's rules and ... even the temp agencies, what they list as the guidelines, is any combination of 3 incidents you're gone. That's being a minute late for work ... if you're late, if you're sick, anything at all, any type of emergency, you get three strikes and you're done. (Max, Waterloo agency worker)

Similarly, Malek describes a temp worker colleague who, because he had family obligations, declined overtime weekend work on two occasions and as a result lost his work placement:

Yeah, a temp worker will come and is gone...One guy--- They were trying to force us to work on the weekends...So I would work on the weekends...because I am workaholic...But this guy had to spend time with his family and he didn't come in one time. Second time he said he's not coming in they got rid of him. And he was working there for 9 months. (Malek, Brampton agency worker)

That temp agency workers face pressure to work harder, faster and longer than regular workers in order to retain their agency job placement was well recognized by a health and safety inspector, who also saw the resulting injuries:

An example is a temp agency... it's a young guy... the guy was operating a machine. It was a two hand control and he figured he could do it faster. He's a temp...and if he did more work... the guy [client employer] would hire him full-time. So... he tapes a stick over the two buttons. Then he operates the two buttons with one hand. And then he ends up with his hand inside the machine and takes off all of his fingers. (Joseph, workplace health and safety inspector)

A problem with the temp agency worker imperative to constantly 'prove themselves' is that they can take risks, be unfamiliar with people and processes, or can lack stamina for extended physical exertion. Malek described injuries occurring when inexperienced temp workers tried to keep up with their peers:

I've seen a lot of guys get hurt though because they are trying to do the job to catch up everybody else. Or someone might be not as strong as everybody else but he's trying to use his strength, he's trying to use his effort. And they get hurt. There's some jobs, you need to be able to push a lot of weight... some work are heavy duty work. Some guys don't have the stamina to do certain jobs and then there's some jobs like working at nights... Some people come when they are tired and that's going to be dangerous. (Malek, Brampton agency worker)

The relationship between injuries and rushed temp agency workers was evident to a temp agency manager, Justina, who explained that temps were injured at a job placement because they were working "as fast as they could":

We worked with a plant that manufactured [item] and our temps were working with like Exacto knives –trimming the loose plastic. We had a lot of knife cuts with our temps that we were sending out there. It wasn't because it was an unsafe environment but just because of the speed that they were working.... They didn't have a quota to meet [but] they were just going as fast as they could to produce as much as they could ... I think we had a few stitches at the time where... they had to maybe miss part of a day to go get stitches but then they were okay to go back ... As long as they were fully bandaged and everything. (Justina, manager, local TWA)

When asked why temp workers were more vulnerable to injuries than permanent workers who performed the same work, Justina further explained that temp workers lack the tacit knowledge



and the familiarity with the job role needed to prevent work injury. Therefore, newness, together with speed and employment insecurity appeared to provide particularly risky work conditions:

Probably because they were short term employees...I am sure their long term employees had the occasional accident but when that's your job day in and day out for years at a time you have the knack. You know what to look for and you've got your own steady pace...When you're doing it for a day here, a day there you know, you're not going to have the routine; you're not going to have the skill level to avoid the knife swipes as much. (Justina, manager, local TWA)

The same economic insecurity that led temp agency workers to sometimes strive to work longer, harder and faster than their permanent peers was at play with respect to the reporting of hazards and workplace injuries. Agency workers were disinclined to complain of these issues because this could lead to loss of their current or future job placements with the agency.

Like you can't come back and tell them you know "Where you sent me, the job is not good". (Jeff, Kingston agency worker)

Jackie recalled a temp co-worker who tried to cover up a workplace injury in order to avoid appearing undesirable to the client employer or the agency:

I had a girl sprain an ankle...We had about an hour to go before [end time]. She says... "Just...don't say anything, I've got an hour and then I am going to be going home"... [But then] another girl saw [her] limping [and] ratted [her] out. (Jackie, Waterloo agency worker)

## **8. TWA workers lack a JHSC forum**

In the face of the many OHS risks specific to the structural arrangements of TWA work and agency workers' special barriers to 'speaking up' about work placement problems, we were surprised to find an eighth structural arrangement that contributes to elevated OHS risk for TWA workers. We found that temp agency workers also lack the legally mandated forum of the Joint Health and Safety Committee (JHSC), which is required in all Ontario workplaces with 20 or more employees. This is because the regulators do not include temp agency workers in the calculation of the number of employees in the workplace. Only the regular staff of the agencies themselves are counted.

Well, we don't need to have a joint health and safety committee we were told... [by WSIB and the Ministry of Labour] we don't [need] to have a joint health and safety

committee because we're under...20 employees [for our recruitment staff]. (Jessica, recruiter and health and safety specialist, local TWA)

The Ministry's rationale is that the needs of temp agency workers are addressed by the JHSC at the client employer site. This practice means that the temp agency sector is the only known sector in Ontario that is not required to provide a forum for worker participation in the identification and resolution of OHS risks. This omission further silences workers in a sector where they are already known to be reluctant to speak up about hazards. This exemption for the temp agency sector also fails to consider the many unique risks faced by temp agency workers (distinct from issues faced by permanent workers at a client employer site) that could be identified and possibly managed through a JHSC forum.

## Summary

We identified eight key structures exist in Ontario that would shape the occupational health and safety risk behavior of temp agency parties:

1. Structural legal incentives in WSIA actually encourage the outsourcing of risky to client employers
2. WSIB rate groups make this risk transfer particularly affordable to TWAs.
3. When risks became unaffordable, smaller agencies were well positioned to simply close and re-open, leaving work and health fines behind.
4. We found that the three-way employment relationship, where agency workers were employed by the TWA but sent to work and be supervised at client employer sites, created certain risks for workers. Workers lacked familiarity with equipment and processes. In some situations, their presence posed a job threat to permanent workers; they were disliked and their work was sabotaged.
5. Temp agency employment arrangements involve agency staff assigning workers to jobs when they do not fully know the work site or precise job needs. This could lead to dangerous mismatches between the worker's ability and the job tasks.
6. The health and safety vulnerability of agency workers was exacerbated by the practical uncertainty among client employers and agencies about who was responsible for on-site risk job training and hazard appraisal. This was framed by agencies taking a legalistic 'due diligence' approach to covering their legal responsibility, without necessarily knowing the practical conditions to which workers were exposed.
7. Job risk for agency workers was also enhanced by the inherent economic vulnerability of agency workers. As the low wage workers in our study engaged in agency work as a last resort, and as their employment could end at any moment, they were positioned to be particularly compliant and accepting of any work provided to them. This meant that

agency workers accepted client employer and agency inducements to work at fast pace and for long hours.

8. Finally, agency workers lacked access to the legally mandated forum provided to all workers in Ontario workplaces with 20 or more workers. Despite their known elevated injury risk when compared with other workers, the Ministry of Labour, by virtue of its interpretation of the statutory requirements, has in practice exempted agencies from the Joint Health and Safety Committee requirement, leaving these workers with no formal venue to discuss and propose solutions for the risks they face as temp workers, including those related to newness on the job as well as training problems and provision of inadequate safety equipment.

## **IV. TEMPORARY AGENCY INJURY PREVENTION EFFORTS—AND THEIR LIMITED EFFECTIVENESS**

As described above, various regulatory and structural conditions created incentives for temporary work agencies to be a target for the outsourcing of risky work by client employers. As well, the conditions of the three-way employment relationship created particular OHS risks. We asked participants how temp agencies managed OHS risks faced by their workers, and heard of various strategies, which we detail below. Here we explain why, due to the nature of temp agency arrangements, these agency OHS efforts would be largely ineffective.

### **A. Limited safety training**

Agencies described providing basic OHS training to all workers. The temp workers regularly described receiving health and safety preparation and instruction such as watching training videos at the agency office, learning procedures such as safe lifting, passing the WHMIS test and certain health and safety certifications depending on the pending placement. This worker described agencies having health and safety training videos for a variety of jobs:

I am with like at least 10 or 12 [agencies] and ... I am pretty sure they have videos for every different safety practise...usually they will show one standard video and then depending on if you're forklift or office or whatever they'll just have a different video for that. (Sean, Brampton agency worker)

A challenge with these generic safety instructions is that they do not address hazards that are site-specific, such as those relating to specialized equipment or particular workplace procedures. One agency owner explained that even though candidates were warned about general safety risks, the variability of specific worksite conditions meant that workers had to make the final call regarding their own safety:

A lot of times when they get out on a job there's very specific -, uh, like we can only do a general safety orientation. When they get out onto the job there's different hazards and different situations that... they have to be able to identify what's safe and what's not safe and, and to be able to report something if it's not--- ... I always tell them "If in doubt, don't do it. Go to your [client site] supervisor and ask for clarification on how they want the job done, what protective equipment you need and what are the proper procedures in dealing with any safety concerns that you might have." (Lester, owner, local TWA)

Sometimes the safety consequences of receiving only generic safety instructions were very clear to temp workers. As a worker explained, although she had received WHMIS training, she was still unsure of the safety of the material she handled at the client site:

I was sitting there cutting [product] from China...This is rejected stuff and I am thinking... “Is this contaminated or is this just not proper product?”...Who wants lead poisoning or contamination...?...Each thing is different...The WHMIS that you’re going to give somebody for a manufacturing plant or a paint plant is not the same as what you give to someone who’s working in an automotive situation, you know? (Jackie, Waterloo agency worker)

As well, pressure to meet fast, on-demand requests for temp labour sometimes required that the agency sidestep even their generic health and safety training procedures. One agency manager described how temps could be placed with only a quick check that they had their safety gear:

I mean there are people that get through the cracks. When you deal with referrals and you are really busy and you really need 5 guys there tomorrow, but sometimes everybody doesn’t get orientated as much as just you know, “Do you have your safety gear? Okay, go!” (Brianna, manager, regional TWA)

The contractual arrangement between TWAs and client employers usually stipulated that the client employer was responsible for reviewing site specific hazards with the agency worker. However, as seen in the previous section, the procedural uncertainty among client employers and some TWAs about agency workers’ immediate readiness to perform tasks suggests that the protection effect of this OHS training arrangement may have limited impact.

## **B. Initial client site inspections**

Temp agencies also described engaging in injury prevention by inspecting client employer sites for OHS quality before placing their workers. However, a limitation of this effort is that work conditions at the time of the placement can vary from the actual day-to-day conditions. For instance, although machine safety guards may appear to be present in a client workplace at the time of a pre-placement inspection, these guards might not be used in practice:

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, local TWA)

As well, a client may decide to abruptly change the workers' job requirements without notifying the agency, leaving reassigned workers exposed to new conditions:

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. (Amy, owner, local TWA)

Bruce, an agency owner, further explained that changed job requirements may mean an unqualified worker is placed to operate dangerous machinery:

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 Bruce come over here. (Bruce, owner, local TWA)

Another limitation of agency pre-placement site inspections is that, even if conditions at client worksites were static (which is an impossibility), agency staff knowledge and understanding of hazards is limited. They are not trained health and safety inspectors. Agencies described providing hazard appraisal training to some agency staff, but every client employer worksite will have unique hazards and these may not be visible on inspection. A key informant described how agency staff are not familiar with client worksite processes and equipment and cannot always recognize hazards. In this case, the lack of familiarity contributed to the placement of a worker who was then killed on the job:

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, worksite health and safety inspector)

We heard agency staff describing relatively weak risk indicators when conducting pre-placement inspections. For instance, agency managers Amy and Jason suggest that if a client is reputable and the worksite looks "tidy", then they will proceed with a placement:

I mean obviously you can't monitor 24/7.... Part of it is you know, knowing the client and seeing the kind of facility they're running. Certainly, a well-run facility is not going to change to a poorly run facility overnight... So, you go into these places and you pretty much can recognize within the first 10 minutes of walking around that these guys have their own safety and health programs in place, they've got all the documentation, and the place is clean and tidy and organized... (Jason, vice president, local TWA)

Client employers are not obliged to accept temp agency inspections, and agency managers described occasional client resistance to inspection. This agency proceeded with a contract under these circumstances, and simply advised the workers to be 'extra careful':

Some companies... we have had in the past....just down and out [say]... "No, you are not coming here [to inspect]." And we generally say. "Alright, we can't force you." But at the same time we're going to double and triple talk to our candidates...that we set up to go there and say, you know, "We don't know what the workplace looks like...They've told us these are the things you need to watch out for. For....your safety, you need to wear this..." We have to do the best that we can, right? (Dorothy, recruiter, local TWA)

### **C. Reliance on agency workers to report site hazards**

Agencies and workers regularly described how workers were instructed to report to the agency any conditions that appeared unsafe or outside of the job description at the client employer site, and to refuse unsafe work:

Well, we make it very clear to them that they are to listen and only do what they are trained to do, even if your supervisors say, "Well, get on this machine". You are to let them know that you have not been trained for it. They are to report to us if they were replaced on a machine that they weren't trained on... the next day so that we can contact the client and say, you know, "Your supervisor on night shift put this person on a machine and he is not trained for it. So, he refuses to do it tonight. Provide him some training and he will do it. (Joanne, recruiter, local TWA)

So we really work with our workers. It's like, you know, "If you're asked to do something you are not supposed to do or we didn't tell you [that] you were supposed to do, it could be a higher bill. It could be a higher pay rate. And so... you need to tell us." (Kendrick, risk management specialist, multinational TWA)

These examples provided were sometimes couched in a framework of 'safety', but it became apparent that an income source for agencies was also at play. Client employers who hired workers at low rate for 'general labour' could then be charged a higher rate if the agency became aware that job tasks had become more complex.

Reliance by agencies on worker reporting of client employer work conditions was problematic. First, this scenario requires that workers are able to discern problems and hazards in their placement workplace, which is questionable. For instance, Malek was assigned to asbestos removal work, and believed that the risk he faced was of “infection” rather than a deadly cancer:

[At my first agency placement] I worked with a company they did asbestos removal, demolition... I learn all stuff working together ... They just said, “Okay you’ve got to wear this mask, you’ve got to do this—”. ...After I start working there for a while, and working with everybody else, because I pick up fast, right, learn about...three different methods of protecting yourself in different ways. Like for example...asbestos is fire retardant, right? So...up to a period of time it’s no good no more and if it gets into your lungs it can cause infections, right? (Malek, Brampton agency worker)

A second problem posed by a reliance on agency workers to report work hazards and client employer job-switches is that it presumes that these workers are able to ‘speak up’ without fear of job loss. However, agency workers may feel that if they refuse the request of their worksite supervisor then they are also jeopardizing their job placement. For instance, Renshu, described being asked to lift heavy boxes even though this wasn’t part of the job description. He worried about not having been assigned to this work by his agency, about hurting his back, and about how to manage the agency request that he let them know if he were to be asked to do work other than that indicated in the initial placement arrangement. In the end, Renshu decided that informing the agency was an inadvisable action:

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, Toronto agency worker)

In another example, Jackie didn’t report worksite hazards to the agency because she saw this gesture as threatening the little income she had been able to secure:

I: Did you ever think of talking to the agency about [these worksite hazards]?  
Jackie: Hell no... If I go to the agency and say something, I am a trouble maker, so I am not going to get called back in there”. (Jackie, Waterloo agency worker)

#### **D. Lack of regular communication about job challenges or OHS**

Although it seemed surprising that TWAs relied on a passive ‘rely on the worker’ approach to discerning OHS hazards once a placement occurred, this strategy did facilitate agency ‘deniability’ about poor health and safety conditions. After workers’ first engagement to register



with a TWA, they described “getting in touch” or “coming into contact” with their agency mostly to fulfill requirements such as determining work availability, sorting payment issues or determining the details of a new assignment. Overall, it appeared that if workers were being paid correctly for the hours they worked, then they had little communication with the agency:

You usually don’t need a lot of contact because as long as you submit your hours. Now some agencies ... you have to fax your hours in ... so as long as your hours are in, you should have no contact with the agency unless you’re really unhappy. (Jillian, Toronto agency worker)

I: Any other things about health and safety that...you thought that the management was good [at]?

Ray: Through the temp [agency]? ... It’s hard to say because you only deal with them when it comes to getting your pay cheque. (Ray, Hamilton agency worker)

When we did hear of agencies contacting workers post placement, the contact focused on productivity rather than safety. Critically, no agency described a process of systematically *following up* with workers during the placement to ask what work workers were actually doing and about work conditions over time. This was despite the regular complaints by TWA staff about clients switching workers to tasks other than that agreed by the agency.

We had one guy who was working at a place as a general labourer and as far as I knew he was there for 6 months as a general labourer... He came in here one day and said.... “You know what, I am doing CNC [major machinery] work over there.” “You’re doing what? ... Well why didn’t you tell me this before?” “I thought you knew”. “No I don’t know nothing”. (Bruce, owner, local TWA)

An interesting aspect of Bruce’s story is that he described being in regular touch with his workers because he hand-delivered their pay cheques. Yet in this instance, he did not know over a 6 month period that his worker was doing machinery work. This demonstrates that while there may be continuous physical contact between temp workers and the agencies, this does not mean that information is exchanged about tasks or health and safety. Indeed, the agency staff member who makes contact with a worksite might not be aware of what placement the worker was supposed to be filling. This can leave workers exposed to conditions for which they are not trained. It also enables agency ‘deniability’ regarding poor worksite conditions:

There’s a deniability the temp agency has in terms of what the problems are...You know, the machine didn’t have a guard on it. “Well, we didn’t know that that was a problem. We were unaware of that...we just send the people out there. (Jacob, OHS legal advisor)

The absence of a formal and regular system to discern client employer health and safety conditions seemed to be especially lacking when one TWA manager used the noncommittal language of “hoping” that workers would use informal avenues to speak up:

I: Do you do a debriefing process like after somebody has been to a site to find out how they felt around safety, if they were asked like to, if they followed the job description?

Lester: ...I would say not formally. But you know, like when I am speaking to the guys I will ask them how things are, what’s going on, you know, and I will try and get a general feel for things and, if ...there’s something on their mind I am *hoping* that they will use that opportunity to bring it up. (Lester, owner, local TWA)

#### **E. Even when agencies learn of OHS hazards at a client site, they have limited ability to alter work conditions**

Even when agency managers did learn about an OHS problem at a placement worksite, they described being in a conflicted economic position: do they risk good relations with a client by questioning their safety procedures? If a client assures them that conditions are adequate, does the agency rely more heavily on the worker’s account of the risk, or the client employer’s explanation? At what point does the agency make a decision to withdraw their workers and end a contract? By that point, what have been the hazard exposure conditions of the agency workers?

Agencies have limited ability to influence the workers’ job conditions; indeed, they do not control the client’s worksite. Therefore, agency managers described “asking nicely” for changes they thought necessary to protect their workers. For instance, Joanne spoke “nicely” to a client in an attempt to persuade him to provide machine training to a worker:

If you talk to them nice enough ... they’ll usually go ahead and train them. We’ll be, like... “He is a little nervous on it [the machine] ... He is worried that he is not doing it properly and worried about doing something wrong. If you could provide him with a little bit of training or knowledge of it, that might help his confidence”. (Joanne, recruiter, local TWA)

In another case, an agency manager addressed the client employers’ job switching practice by explaining that the worker was “improperly dressed” to fulfill the new job function rather than explain his actual concern about safety:

The guy [temp worker] called and said... “The guy wants me to shovel the driveway”, I said, “If you want to do it, you’re more than welcome to do it, [but]

that's not part of your job description and you can refuse it. I would prefer you didn't do it because if your hurt your back and then I've got to explain to Worker's Comp why the person who was just supposed to be a line attendant is shoveling snow and I don't like that..." So I talk[ed] to the supervisor, I said "I really don't like you doing this. If you want somebody to shovel your snow, call me, I will get you some guys to come shovel the snow for you. I won't even charge you because we [got] 50, 60, 70 guys there 24/7 .... But you can't ask one of these guys because ... he's not dressed to shovel snow". (Bruce, owner, local TWA)

In some situations, in light of preserving a client contract, agencies favoured the client's version of an OHS hazard over that of the workers:

So, you know, you've got to be artful and diplomatic [if a worker reports a hazard]. And I try to rescue the employee as quick as I can.... [But] look, if it's a good customer and this is an 'out of the blue' situation, then I almost want to believe the customer. I say "Well, this is so unusual. I wonder what's going on." (Doug, owner, local TWA)

It's almost like a shady area, the client will say "Oh, no this is not what's going on." And meanwhile, that IS what's going on. But they'll say "No, no, no, no it's not." Because the agencies will try to protect their client. Because ...it's like gold, it's ... money to them, it's all about money... (Sean, Brampton agency worker)

Indeed, worker notice to the agency of improper client employer work conditions was seen by one agency manager as something the client might regard as 'tattle tailing' and that could negatively disrupt the TWA-client employer relationship. In the following case, the agency simply withdrew the complaining worker and sent another worker to the client employer:

Joanne: They usually call in and they will be like, "You know what, I was training, I was put on this machine last night and I don't know how to use it"....[And we ask the client employer], "Do they want to put him back on it?" Then they have to train him. Otherwise then he is going to go as a 'general labourer' again. ....At that point the client may say, "Well, don't send him back then....we don't want him back because he is tattle tailing on us."

I: So then you have to send someone else?

Joanne: Yeah. (Joanne, recruiter, local TWA)

When 'asking nicely' didn't work, and agencies had a clear understanding that a hazard was present, their strategies included engaging in a slow withdrawal of their workers, and calling Ministry of Labour inspectors to the site. With these approaches, agencies did not overtly

challenge the client employer, and so preserved the possibility of future contracts. However, they also knowingly left workers exposed to harmful conditions.

I called the Ministry of Labour and I asked the guy to go and do an inspection ... and (they) issued a whole bunch of stop work orders ... They haven't ordered too many people since then, but we haven't been able to supply. It's been something where we just you know, again, I phase them out...I am not going to say "I am not doing this" but (I will say) "I'm sorry okay, no I haven't been able to find you anybody." (Doug, owner, local TWA)

These TWA managers describe managing cost priorities while strategically reducing the number of workers at a client site, to ensure client payment for outstanding contracts before "shutting the doors" entirely:

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. (Jeremy and Jessica, recruiters, local TWA)

Likewise, this agency owner left his workers exposed to a known hazard while he went through what appears to have been an extended "ask nicely" process with the client employers:

On a construction site... they were working ... 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, local TWA)

If an agency made a decision to withdraw workers and end a contract, it could mean the loss of a client for the agency and loss of employment for the workers. These strategic economic concerns of TWAs were at odds with workers' health and safety needs. These economic tensions leading to downplay of health and safety risks were enhanced by the short term, detached social relationship between the agency and the worker, together with the economic insecurity of TWA employment conditions. These conditions could create an agency appetite to accept the risk of the health hazard.

## **F. Summary**

This section detailed the injury prevention efforts of TWAs and explained why their efforts would have limited effectiveness for preventing injuries among agency workers.

- Although agencies generally provided their workers with generic safety training, the on-site conditions would be quite varied and the generic training could have limited utility.
- Agency staff described conducting pre-placement site visits for every client employer site, but these visits would be of limited value because conditions change day by day at work sites and also agency staff are not fully trained inspectors with the capacity to understand all relevant risks at different workplaces.
- Agency staff tried to manage day-to-day worksite risks by instructing their workers to tell them of any job changes or OHS hazards. However, temporary workers don't necessarily have the skills to identify occupational hazards in new worksites, and the reality of their insecure employment position with the agency would lead low wage workers such as those in our study to remain silent to preserve the continuity of their job placement rather than to complain and possibly disrupt their income stream.
- We found that agencies were not very proactive about identifying post-placement OHS risks. That is, the agency staff in our study did not describe regularly following up with workers about their job placement conditions. If there was communication, it seemed instead to focus on job tasks assigned in relation to agency charge-out rates.
- Even when agency staff did learn of significant OHS hazards at a client worksite, they sometimes weighed the relative risk of removing the workers versus losing the client contract. This led to ongoing worker exposure to known hazards while agency staff 'asked nicely' for client employers to improve conditions.

## **V. TWAs AND THE PROBLEM OF RETURN TO WORK**

When a temp agency worker is injured or becomes ill due to a job-related incident, the Workplace Safety and Insurance Act stipulates that the agency, as the only recognized employer, is responsible for return to work.

That is, employers are required under the WSIA to accommodate the worker by providing modified tasks until the he or she is able to resume the essential duties of the pre-injury job. For employers, there are strong financial incentives for early return to work and work accommodation built into experience-rated workers' compensation insurance premiums. These premiums increase significantly for every day of 'lost work time' due to a work injury or illness. The employer's return-to-work responsibility ends when a worker has recovered and is able to resume the essential duties of the pre-injury job. Then, a re-employment obligation applies if the worker has been employed by the employer for at least 12 months.

In this section, we detail the awkwardness of these return to work arrangements for TWAs, given that the agency is never the actual site of the work for their workers and therefore is ill-equipped to provide modified work or re-employment. Further, the client employer bears no responsibility under the WSIA for injury management and return to work, despite the reality that the injury would have occurred on their site and under their supervision. Here, we show how some TWAs suppressed injury reporting and how the detached social relationship between agencies and their workers reduced TWA sense of responsibility for injured workers. We also describe the relatively light work accommodation and return obligations of TWAs, and how the three-way employment relationship makes it difficult for agencies to provide appropriate modified work.

### **A. TWAs can suppress injury reporting among uninformed and economically insecure workers**

One way that TWAs in our study avoided workers' compensation costs related to work accidents was by actively discouraging injury reporting. Although agencies were required by the WSIB to report and manage any injury, regardless of severity, one major agency described a deliberate strategy, involving a 15 page accident report, to suppress any complaints that were not "a serious accident":

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

Onerous reporting procedures, like the one described above, can make the worker's process of reporting an injury an intimidating experience. One worker, Sam, described being told by his employer that his chances of getting WSIB were scarce, and this discouraged him from reporting an injury:

I was told by some of the temp agencies I work for that-- I don't know if this is good or bad ... but I mean I have been told that if... if you slip and fall, before you hit ground you're fired. ...so, the chances of you getting Worker's Compensation or something is nil to none. (Sam, Toronto agency worker)

Arthur, a key informant, observed that TWAs can pressure their employees to report an injury as not work related. Temp workers who are economically vulnerable may not want to risk reporting a work related injury for fear of not regaining an employment placement:

They [agency] tell the kid before he ever gets to the hospital, "If you tell them it was a workplace injury, you're fired. Don't ever come back here." I mean, these kids, they're vulnerable workers. If they're not kids, they're from another country and are not here legally right? And they're just preyed upon by this type of [temp agency] industry. (Arthur, workers' compensation regulator)

Workers also spoke about being encouraged by their TWA to take "a couple of days off" rather than to submit a workers' compensation report.

## **B. TWAs resist RTW burden**

We found that agencies were suspicious of injuries among their temp workers and did not want the injury costs. This resistance to 'caring' for their workers is not surprising-- temporary work agencies have little social contact with their workers and no long term investment in them. We found that all parties in the triangular employment relationship employed a special, socially detached, vocabulary when describing these workers. Workers described themselves as a "commodity"; client employers used terms for strong young workers such as "young gorillas"; agency staff described workers as their "product...like a hamburger" that needed to be of reliable quality and regularly simply referred to "T4's" (tax forms) when asked about their labour force.

In this way, the language used to describe the role and employment relationships of temporary agency workers was different than would be the case in a regular, long-term employment relationship where the employer supervises the tasks of the worker. Indeed, temp agency employers rarely see their workers and never supervise their work. However, work reintegration policy in Ontario relies on quality of the more traditional employment relationship, where the employer and the worker have a social relationship and the employer provides the site of work and the tasks:

“A worker’s prospects for successful work reintegration both in the short and long term are often best achieved by maximizing opportunities for return to work with the injury employer, including retraining for a suitable occupation with that employer” (WSIB, 2013)

We suggest that the detached social relationship had an effect on agency willingness to assume employer responsibilities following a workplace accident. For instance, one agency staff member explained that he had only hired the worker for a few hours, and so did not feel obliged to a worker beyond that time frame:

We did our due diligence and everything possible [at the client firm]...They were only going to go for four hours at one place. And in hour one they got injured. But the injury was so severe; they were unable to work for another three months. We’re liable for three months as a result of one hour’s worth of work [indignant tone]! (Jeremy, recruiter, local TWA)

The temp agency business, where an agency may employ a worker for only a few days or weeks, is one where the employer takes the risk of continually hiring new workers. These conditions could and prompt agencies to aggressively contest worker claims:

I was at [storage facility]... there was still this WSIB claim going on and [TWA]was having a give and go with WSIB claiming that it was a previous injury that had been aggravated.... They were trying to get relief of their obligation. ... [Then] WSIB basically said, “Yes, this injury was from a previous injury”. (Brendon, Kingston agency worker)

There were others who ... would fight us on every claim. So ... they were signing up saying, you know, “We’ll assume all of the responsibility to the claim”, and then on the flipside every claim that came in they denied and questioned and fought. (Philip, workers’ compensation regulator)

Agency managers frequently appealed to the temporariness of their engagement with workers to



detach themselves from responsibility for the worker's health. A frequent statement among agency staff was that they eschewed responsibility for any health problems that the worker might possibly have previously acquired:

The way the legislation works is, you hurt yourself 5 years ago...and maybe you haven't had a reoccurrence for 5 years, you come to work for me and...you have a reoccurrence in the first 3 days [and so] it's now my responsibility. And I am stuck here going, "It's my responsibility" [indignant tone]? ... Because I am the last one standing, I pay the bill. (Vaughn, owner, regional TWA)

Somebody could work for us, they could work for, you know, one of my competitors tomorrow and another one of my competitors the next day... So, are people bringing injuries with them? (Kate, CEO, multinational TWA)

TWA managers described being particularly reluctant to face liability for injuries that were non-acute—that might have been the result of accumulated exposures where the workers had been employees of other firms:

Celia: It is the worst and you know... they don't have to tell us [about their injury record].

Vaughn: There's two problems. There's repetitive injuries, we have an aging population and.... was [the injury due to]... a result of the employment I put them on? Or was it a result of, you know, 20 years of heavy lifting? And that's what we are running into in the market place now. (Celia and Vaughn, recruiter and agency owner, respectively, regional TWA)

Agency staff described temporary workers as concealing pre-existing injuries in order to guarantee placements. The TWA staff sometimes saw themselves being burdened with a problem that did not necessarily stem from their employment, and they had no long-term interest in these workers.

We come across it a lot...They are not upfront and letting us know that they have pre-existing back injuries...Get in there and...they hurt themselves...Some workers...feel they have no choice...They're...incentivized to lie because they get employment. (Celia, recruiter, regional TWA)

If people had a pre-existing condition and they don't tell us about it.... Like we have somebody in our office now whose back is sore and he is doing a lot of bending and lifting, that's the job. But he even said "Well, I kind of thought things were better".

But it really wasn't better. So, people sometimes will lie to you to get the job.  
(Kerry, manager, multinational TWA)

Agency staff regularly cast worker injury claims as illegitimate, and their workers as “working the system”:

Our workers, because of their life experiences, often know how to work the system. Currently I have a worker in one of our offices... He was assigned to work unloading a truck. It was supposed to be 2 people...unloading at a time...The witnesses say that's what he was doing. His story is, “I was unloading the truck by myself all day long and I hurt my back”...[That's] what he told our [representative] when she offered modified duties, saying, “No, I am just going to stay home and let comp put money in my bank account”. (Kendrick, risk management specialist, multinational TWA)

Similarly, a TWA recruiter described an injured worker as avoiding work reintegration efforts in order to profit from wage replacement payments from workers' compensation:

Right now we have an employee who was at home injured...We're trying to work with him and his physician and also the WSIB return to work specialist. They're trying to get him ... integrated back into the workplace ...but ...he does not want to go back to work and you always have those, you know ...The Board pays about over 90% of your- So...they're sitting at home and they're saying, “Okay I don't need to go back to it”. (Susan, recruiter, local TWA)

### **C. Problems with TWAs, modified work and re-employment**

Although agencies resisted WSIB claims, the following sections describe instances when claims were not avoided and agency filed a formal claim with WSIB. At this point, the TWA is responsible providing modified tasks to the worker until the he or she is able to resume the essential duties of the pre-injury job. A further re-employment obligation applies if the worker has been employed by the employer for at least 12 months. However, for reasons detailed in this section, these mechanisms work poorly in the context of the TWA triangular employment relationships.

#### **Client employers lack responsibility for RTW**

Although agencies described asking the accident site client employer if they could provide modified work, this activity appeared simply ritual. In fact, client employers have no legal requirement and would have little incentive to take responsibility for temp agency accidents on their premises.

We've had a couple of...client employers in the past who have provided (modified work)...but it's not always possible because they don't want to have it on their budget...if they're not getting productivity out of them. (Jessica, recruiter, local TWA)

Client employers also emphasized that they would avoid the burden of providing the worker with modified work.

I: Have you ever become engaged in...return to work for an agency worker who would do modified work here?

Sarah: No, no... We would not be responsible for managing modified work. That is the responsibility of the agency. We couldn't do that because you're paying people for doing less than what they are supposed to be doing. So, we would not ever enter into that arrangement. (Sarah, vice president, client employer)

#### **TWA difficulty with creating appropriate modified work**

The most common modified work practice described by participants was the placement of injured workers in the agency office doing relatively meaningless modified work. It could be extremely challenging for agencies to create or find modified work opportunities within their own offices for workers with non-clerical skill sets, who had been placed as 'general labour' in warehouses, or assigned to work such as driving forklift trucks. TWA recruiter Susan described this ill-fit between agency workers and TWA offices:

On more than one occasion we've had to bring people in our office...general labourers, pickers, packers who have no office skills...It's been quite a challenge and my boss is always objecting to it because he is saying, "These people have no skills, how can I bring them in my office?" ...No one wants to deal with injured workers and [client employers]... they will tell you...right out that..."I don't have modified". (Susan, recruiter, local TWA)

One agency owner described how the placement of an injured worker at his agency office generated extra work for the internal staff, because the worker had to be supervised:

It was kind of more disruptive in the office because...you had to almost have somebody watching over him all the time, you know, to make sure he's shredding the right papers you know?...We just have to hopefully get him back to work as soon as possible. (Lester, owner, local TWA)

In some cases, agency staff made little effort to create meaningful or rehabilitative work for injured temp agency workers:

Yeah, put all the caps on the pens, you know. Sort through these paperclips...you've got to give them something. (Joanne, recruiter, local TWA)

In one case, a severely injured worker required several months of modified work, leaving him exposed to poor quality 'make work' modified work which he said eventually left him ill. This worker, who had been engaged in truck driving, was assigned to watch training videos on the computer for three days a week, every week. The worker described how, over time, this activity led to elevated blood pressure and other stress symptoms such that at the time of the interview he was on leave due to these conditions that developed during the modified duties.

#### **Exploit worker vulnerability to reduce workers' compensation 'lost time' costs**

Once a work injury happens, the agency must provide modified work for the injured worker. If modified work is not provided, then each day of 'lost time' contributes to a growing and costly premium surcharge. This arrangement is structured to motivate employers to provide work reintegration arrangements for their injured workers. The rationale for this approach is that "returning to daily work and life activities can actually help an injured worker's recovery and reduce the chance of long-term disability" (WSIB, 2013).

Temp workers and key informants observed that injured temps were sometimes asked to return to work immediately after the injury, even when some time off was warranted. Warren, for instance, was contacted by his agency shortly after being transported by ambulance to a nearby hospital and asked to immediately start modified work at the agency office:

They said I had a broken hip... But it turns out it wasn't broken; I got it re-x-rayed [later]... I got home about 3:00 in the morning and my employer called me right at 8:30 offering modified duties. (Warren, Hamilton agency worker)

TWA employers' aggressive return to work strategies also played on the insecurity of low wage workers. For instance, Kendrick knew that workers couldn't afford to wait for WSIB payments and would accept paid modified work even when their doctors advised otherwise:

Even if...their medical says that... it should be have time off, we will still offer them modified duties. They have the right to refuse [modified work] at that point but a lot of workers can't afford it... They can't afford to wait for the 4 weeks before the Board sends them their first cheque. (Kendrick, risk management specialist, multinational TWA)

Agencies sometimes engaged in a form of harassment that could lead a worker to 'quit' and abandon a claim, thereby ending the agency's workers' compensation premium costs related to

that case. For instance, Jeff described the stressful experience of not being talked to or even having his physical presence acknowledged when assigned modified work at his agency office:

After four hours I come and say, “Can I get my cheque?” The lady said, “I didn't even see you. I didn't know you came in”. I said, “I just came in and said good morning to you when I was here in the morning...I said “What do you mean you didn't see me?” She said, “Oh I don't remember seeing you” (Jeff, Toronto agency worker)

Similarly, Warren was shunned at the TWA office where he did his modified work:

Well, just when I come in she goes, “These are rules: you don't talk. No talking to anybody, no personal phone calls. And if you leave the office you have to tell somebody”. And yet I would hear all the girls talking about their weekend or talking to their husbands about picking up the children, all on personal phone calls. I couldn't do anything like that and I couldn't talk to anybody. So...I sat in the corner and stared at the web, you know...let my 8 hours go by. [I: That doesn't sound like much fun.] It wasn't much fun at all. But... I didn't have a choice in the matter and they are offering modifying duties and I had to go....I mean she doesn't even acknowledge my presence. She'll walk in, won't even say “Good morning, hello how are you?” ...They had a little birthday party for [a worker], they all ate cake and I didn't get any. Not that I wanted any but I mean-- [it was only a small office with 5 people]. (Warren, Hamilton agency worker)

#### **Modified work as ‘reduced rate’ injured agency workers to clients and charities**

Another way that agencies reduced work injury ‘lost time’ costs related to workers’ compensation premiums was by providing injured temps free of charge to charities and at free or reduced rates to employers seeking workers for light work. For instance, agency manager Kendrick described how some clients just need to ‘get some stuff done’ and don’t mind getting a temp who needs to work at a slower pace, provided that the price is right:

We will try to give them at a reduced rate so at least we’re recouping some money...We will call the customer saying, “I got a guy here. Listen, really all he can do is sweep, he can’t do your normal things, but he can sweep around... Instead of our normal \$16 an hour what I am going to do is charge you 8...And you’ll be helping the guy out, you will be helping me out”...Some of our clients are good for that...they get some stuff done...It may not be to the speed they want but they’re getting...a deal. (Kendrick, risk management specialist, multinational TWA)

TWA manager Dorothy described providing injured workers to client employers with whom she had a pre-existing relationship. Although Dorothy paid the labour costs, the client employer

provided the temp worker with ‘something to do’ which, to Dorothy, was preferable to having the injured worker at the agency site:

Dorothy: Okay, some clients we have...like a pre-existing agreement... If somebody should get hurt and they need to sit at a desk we call the client and say, “Hey, you know, do you have a spot available for somebody? ...

I: And they are going to pay you for that? To send someone to-?

Dorothy: We have to pay them. (Dorothy, recruiter, local TWA)

TWA’s also minimised ‘lost time’ costs associated with workers’ compensation premiums by sending workers to fulfill their modified duties with a charity that would, in turn, provide the agency with a charitable donation receipt. Although the agency must pay the injured workers’ salary, by engaging charities to provide modified work assignments, agencies could meet their modified work obligation and at the same time offset their costs with the charitable donation receipt:

Kendrick: If we can’t find any client whatsoever we will try to look for a charity...We have also had people working at the food banks, Salvation Army, Habitat for Humanity even Value Village...

I: So that way you don’t have any lost time?

Kendrick: Right...we’ve got a worker working today ... at the Canadian diabetes association sorting clothes. (Kendrick, risk management specialist, multinational TWA)

While this arrangement of placing injured workers with other employers and charities may have helped TWAs to avoid lost-time charges on their experience-rated premiums, it provokes a larger policy question about the rehabilitative effectiveness of TWA practices. Work reintegration policy is premised on the idea that injured workers achieve healthy rehabilitation by being returned to their pre-injury job and coworkers. For agency workers, these principles do not fit. Further, placement employers may not explicitly know of the workers’ functional restrictions due to the injury and would have little inclination to monitor it. For instance, Max, an injured temp worker, was sent for modified work to a charity where he was asked to help with their food drive. Although the modified work was supposed to accommodate Max's hand injuries, the job required him to lift food boxes, and breached his recovery conditions.

What [work the agency] thought they had for me...I did it...under 2 weeks, right? ...They said, “Would you mind going to [a non-profit religious based organization]?” I said, “No problem.” I don't mind helping people out right? So, I went with them... till the end of [month] and basically I set up their entire food hamper drive...like two tractor trailers worth of, unload it by hand myself and one other employee ... The

temp agency was still paying me; that was part of my modified duties. The problem was the modified duties I was supposed to have were supposed to have no manual dexterity. Basically I wasn't supposed to do anything with them. But I can't do that.  
(Max, Waterloo agency worker)

Max's case highlights the challenge of TWA oversight and communication regarding work accommodation. The charity in this case, may have not been aware that the agency was providing them with an injured worker on modified duties. Even if they were informed, they might not understand the rehabilitation needs. This creates a risky situation for the worker who may not receive the appropriate work accommodations needed for recovery.

### **The relatively light re-employment obligations of TWAs**

In Ontario, all employers have an obligation to provide modified duties to a worker (who is injured or ill due to their employment) until he or she is able to resume essential duties of their pre-injury job. At that point, only some employers also have an obligation to retain the worker. Re-employment obligations of up to two years apply to employers who regularly employ 20 or more workers (this would include every TWA firm; with fewer employees the business would not be viable) and who have continuously employed a worker for at least one year before the date of injury. It is with this re-employment obligation that the treatment of TWAs in policy differs from the treatment of other kinds of employers. For TWAs, 're-employment' simply means putting the worker back on the agency roster. It does not actually involve bringing the worker back to paid employment. Although TWAs might in practice have few workers who are continuously employed for 12 months, and this policy may not come into play, what is relevant is the lighter re-employment obligation that is accorded to TWAs:

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 WSIB OPM 19-04-05, Fit for pre-injury jobs).

## **D. Summary**

This section has described the various ways that there is an ill-fit between the principles and goals of return to work, and the structural arrangements of temporary agency work. Despite the injury occurring under the supervision of a client employer and on their work site, it is the agency that is allocated the responsibility of providing modified work. This arrangement is awkward because the agency is never the actual site of the work or the accident. We found that:

- Some agencies, including a well-known multinational chain, engaged in workers' compensation claim suppression. That is, some misinformed their workers about their

eligibility for workers' compensation, and others imposed heavy reporting requirements to discourage workers from completing the necessary forms.

- TWA staff in our study described resisting the notion that they should be responsible for managing their workers' injuries and return to work. Some depicted the employment arrangement with the worker as 'only temporary' and they had no social relationship with the worker. A regular comment from agency staff was that worker injuries were illegitimate and therefore worth resisting. These conditions were not conducive to the rehabilitative needs of modified work arrangements.
- When workers were injured on the job and a claim was filed with WSIB and accepted, client employers faced no work reintegration or re-employment responsibility. This is because the WSIA only the agency is recognized as the employer, despite the reality that the work injury occurs on the client employer premises and under their supervision.
- When injuries were recognized by WSIB and TWAs were required to provide work accommodations to workers during their recovery period, they faced difficulty providing proper modified work. Agencies mostly described finding 'make work' for the worker in their agency office. However, in practice, injured workers simply got in the way of the office staff. These workers, who had been placed in jobs such as warehouse work, could be ill-suited to office work and in some situations agency staff simply shunned the workers, a practice that workers described as making their modified work experience particularly unpleasant. In some cases, injured workers became "reduced rate" workers who agencies placed free of charge or at very low rates in charities or other client employer sites. An over-riding concern of some agencies was avoidance of workers compensation premium costs related to 'lost time' which were incurred when workers did not attend work during the WSIB benefits payment period. It was unclear whether this practice of placing injured workers at other sites for modified work was at all rehabilitative for the worker, or whether it included accompanying information about the workers' injuries and physical restrictions.
- When workers have completed modified work, agencies face a relatively light re-employment obligation. This is because their responsibility, as interpreted in policy by the WSIB, is simply to return the worker to the agency roster and not to an actual job. In any event, the re-employment provision rarely applied to agencies because it comes into effect for workers with at least 12 months tenure with an employer and this would rarely be the case with agency workers.



## **V. RECOMMENDATIONS FOR POLICY AND PRACTICE**

This study has identified several areas where regulations appear to not provide adequate employer incentives to prevent injury to temp agency workers, promote return to work and ensure accountability. This led to the following four policy recommendations:

### **1. Apply stronger occupational health and safety incentives and responsibility to client employers, who control the work conditions of temp agency workers**

Prevention incentives and responsibility for return to work management appear misapplied to TWAs.

Client employers supervise temp agency workers, and know and manage the day-to-day operations of their worksites. They are, therefore, in the best position to prevent and manage risk for *all* workers under their supervision.

Areas for action could include a review of WSIA allocation of sole employer responsibility to TWAs, and a reexamination of WSIB rate group structures

### **2. Apply existing joint health and safety committee (JHSC) requirements to temp agencies**

Temporary work agencies may be the only sector to which the *Occupational Health and Safety Act* is not being enforced with respect to the obligation for firms with 20 or more employees to have systematic joint labour-management collaboration on identifying and overcoming occupational health and safety risk. This is despite the documented higher risk of work injury among temp agency workers than regular workers. JHSCs could provide temp workers and managers with a forum for discussing this elevated risk and ways to manage it, as well as for focusing on hazards intrinsic to the status of temp agency workers.

### **3. Conduct proactive inspections of workplaces that regularly use large numbers of temp agency workers**

Temp agency workers do not have secure employment. Low-skilled workers can face employment insecurity and be unwilling to ‘speak up’ about poor work conditions. Proactive inspections would better protect these vulnerable workers.

**4. Apply stronger occupational health responsibility to temporary work agencies that ‘close and re-open’**

Temporary work agencies can operate with minimal infrastructure, making it very easy to close and re-open. It appears that it is difficult in this case to collect WSIB premiums and experience rated penalties, as neither the newly re-opened temp agency nor the client employer is liable for WSIB premiums.

Areas for action could include strengthening employer responsibility for OHS fines through an ‘associated employer’ clause (as exists in the Employment Standards Act).

## **VI. CONCLUSION**

### **Applicability of findings**

The contribution of our study is that it has identified consistent structural mechanisms that create specific OHS risks for agency workers which severely limit effectiveness of TWA injury prevention activities. It has also identified inherent TWA employment arrangements that render return-to-work efforts by agencies an exercise that is awkward, non-therapeutic for workers, and resisted by agencies. These conditions were found in this study that focused on low-wage temp agency work, but would logically apply to all agencies and across all workers and employers.

We argue that Ontario policy loopholes, together with the three-way employment relationship, put agency workers at particular OHS risk. The heightened OHS risk of agency work has been observed elsewhere (Duguay et al., 2008; Fabiano et al., 2008; Hintikka, 2011; Park & Butler, 2001; C. Smith et al., 2010), as has the ineffective and unsatisfactory allocation of occupational responsibility to temp agencies as the sole employer (Hatton, 2011; Underhill, 2010; Underhill & Quinlan, 2011).

The findings counter suggestions that elevated injury risk in TWAs across jurisdictions is largely related to rogue ‘bad apple’ employers, poor quality workers, or simply to ‘newness’ among workers (Barttkiw, 2009; Hatton, 2011).

The findings of this study could be of particular interest to jurisdictions with similar allocations of OHS responsibility to temporary work agencies and client employers. These include other Canadian provinces (Lippel et al., 2011), Australia and the United States. Other jurisdictions with high temporary work agency sector penetration, such as Europe and Japan, might be interested in risk mechanisms identified that relate to the three-way employment relationship.

### **Strengths and limitations**

The study has several methodological strengths. The sample included a variety of key actors, who provided a detailed and nuanced picture of how OHS and injury management plays out in temporary agency work. We captured OHS understandings of a range of agency types—from the multinationals to the small one-shop operations. We interviewed agency staff ranging from CEOs to owners to branch managers to recruiters. We also accessed a range of client employers, matched to the type of work described by the low-wage agency workers. Again, we benefited from in-depth interviews with client employers in a variety of roles, ranging from vice-presidents to managers to site supervisors. We visited a number of cities to access a range of agency

workers. Our legal and policy analysis was thorough and conducted in careful conjunction with data emerging in interviews.

A particular strength of the study was the experience of the research team and the quality of the Advisory Committee. Study investigators and researchers had well developed expertise in qualitative methodology, employment policy, occupational health law, workers' compensation policy, and non-standard employment arrangements. The investigators met regularly and all had extensive immersion in the data. A stakeholder Advisory Committee provided valuable guidance at critical points of the study: the design stage, as results were emerging, as policy suggestions were being formulated, and at the final report stage. This 9-member committee consisted of active and engaged individuals who were well placed in key regulatory, legal, advisory and advocacy institutions representing a broad range of stakeholder perspectives.

A limitation of this study is that it was conducted in one jurisdiction, Ontario, which has its own particular policies and conditions. Because this was a qualitative study, it was not designed to determine the prevalence or incidence of practices. The value of qualitative methods is that they are particularly conducive to identifying processes and mechanisms—these are described in this report so that readers can determine applicability to their own jurisdictions. The study focused on low-wage workers and their work conditions, so some findings of this study (such as the problem of worker reluctance to 'speak up' about problems) might not apply to higher wage agency workers such as senior managers, accountants, nurses and teachers.

### **Dissemination and next steps**

The findings of this paper have been widely disseminated to academic and stakeholder audiences, and reported in the Canadian and American media. Two papers have been published about the study and more are forthcoming. A 'plain language report' has been disseminated to all study participants and interested parties. The published papers are:

MacEachen, E., Lippel, K., Saunders, R., Kosny, A., Mansfield, L., Carrasco, C., Pugliese, D. (2012) Workers' compensation experience rating rules and the danger to worker safety in the temporary work agency sector. *Policy and Practice in Health and Safety*, 10(1), 77-95.

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<http://www.ingentaconnect.com/content/iosh/pphs/2012/00000010/00000001/art00006>

Lippel, K., MacEachen, E., Werhun, N., Saunders, R., Kosny, A., Mansfield, L., Carrasco, C., Pugliese, D. (2011) 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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<http://www.ingentaconnect.com/content/iosh/pphs/2011/00000009/00000002/art00005>

A study website has been established to provide interested parties with available information about the study, including published papers, media reports, and questions and answers. This website will be updated as new findings and papers are published.

The website is located here: <http://www.iwh.on.ca/topics/temporary-work-agencies>.

Next steps are to continue study dissemination, and to apply for funding to prepare OHS advice tools to temporary agencies, client employers and workers. A 2013-2014 study (MacEachen, Saunders, Lippel, & Tompa, 2013) led by the P.I. of how Ontario inspectors are able to identify and manage OHS hazards related to vulnerable workers and non-standard workplaces was inspired by this temporary work agency study.

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