



# Workers' compensation experience-rating rules and the danger to workers' safety in the temporary work agency sector

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## Key messages

For temp agencies, we find that ER created incentives to place temp agency workers in risky work. This might help explain the relatively high accident rate among temp agency workers.

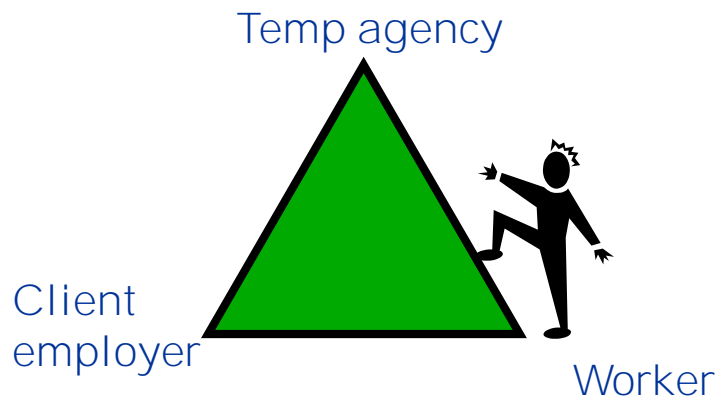
Essentially, we find that financial incentives ‘work’, but in unanticipated ways. It may be difficult for system designers to anticipate how incentives will play out in *real business environments*, and then to make changes to rules when employers have grown to know and expect them.



## The temp agency study: what was the issue?

The temporary work agency sector is flourishing and an increasingly established part of new flexible labour markets<sup>1,2</sup>

Temporary agency work involves a complex triangular arrangement .



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

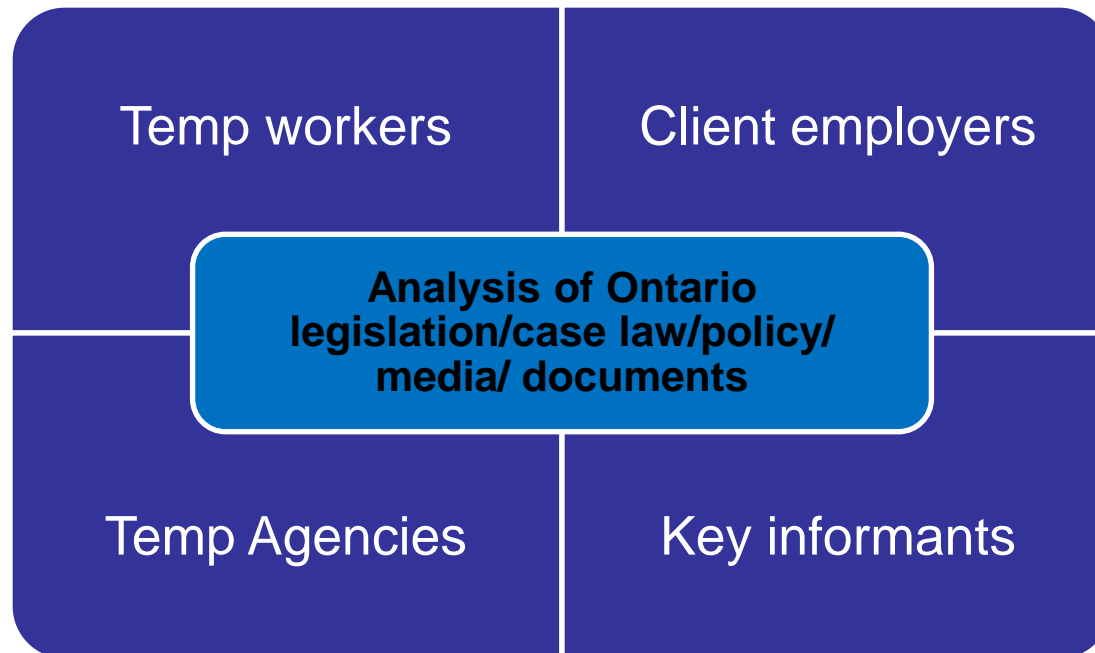
*Given these conditions, how do temporary work agencies actually carry out occupational health and safety prevention and disability management?*



## The study: question and design

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

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



**Purposeful sample:**  
low skill workers &  
jobs

Ontario, 2009-2011



## Participant Sample

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



## Multi-stakeholder Advisory Committee

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

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





# Findings





## 1. Legal context: temp agency is sole employer for ER purposes

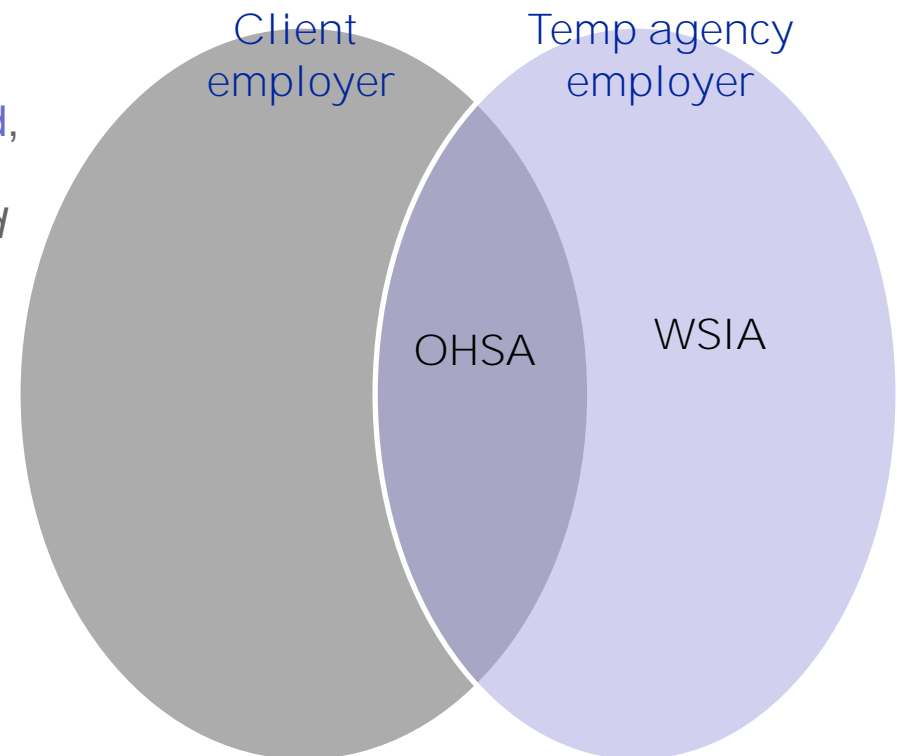
### Workplace Safety and Insurance Act

“In the supply of labour industry, the agency supplying and paying the worker, not the employer to whom the worker is supplied, is responsible for covering the agency's workers under the *Workplace Safety and Insurance Act*.” (7711-001 : Supply of Clerical Labour Operations)

### Occupational Health & Safety Act

Shared responsibility of temp agency and client employer (but no fixed portion)

### Parties responsible for OHS







## 2. A consequence of temp agencies as the sole employer, is that accidents don't show on the client employer experience-rating record.

This provided an incentive for client employers to hire temp agency workers for the relatively dangerous work.

I'll hire a couple of guys for a half a day for unloading the container.... It's just **heavy duty work that I would rather not have my guys doing.** (Stephen, site manager, client employer)

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



## When an accident does happen to a temp agency worker: who knows about a worker injury and who cares?

With ER arrangements, the consequences of work injury were invisible to the client employer and co-workers:

*When I was working at ... one of the warehouses ...One time, one guy...tried to lift the box and it was... very heavy...it said 100 pounds on it... And after that everybody heard a crack...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, temp agency worker)*



### **3. With this ‘dirty work’, temp agencies appeared disproportionately exposed to injury costs. But injury costs were affordable because:**

#### **a) ER rate group classifications**

When temp agencies pay lower workers’ compensation premium rates than client employers, they can build their own lower rate into the contract price. The more dangerous the work, the greater the ‘rate group’ cost advantage



Ontario Rate Group	Description	2011 Premium Rate (\$ per \$100 payroll)
<b>929</b>	<b>Supply Of Non-Clerical Labour</b>	<b>4.83</b>
033	Mill Products And Forestry Services	8.42
036	Veneers, Plywood And Wood Preservation	5.14
134	Aggregates	6.24
159	Livestock Farms	6.78
<b>312</b>	<b>Wooden Boxes And Pallets</b>	<b>6.83</b>
496	Concrete Products	5.19
689	Waste Materials Recycling	5.90
711	Roadbuilding And Excavating	5.06
719	Inside Finishing	7.19
728	Roofing	14.16
741	Masonry	12.15



### **3. (cont'd) Injury costs were affordable because:**

#### **b) Temp agencies have relatively light RTW obligations**

For all rate groups, re-employment obligation only applies to workers with 12 months employment.

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

For temp agencies, re-employment means only that the agency must return the worker to the roster. (If the worker receives no further work, it can be considered a client employer hiring decision.)

Fit for pre-injury jobs

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

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



### 3. (cont'd) Injury costs were affordable because:

#### c) Temp agency workers face extreme economic insecurity and can be influenced to not report accidents

##### Hyper-early RTW

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)

##### Agency harassment

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



## 4. Summary: ER rules create risk for temp agency workers

The financial incentive structure in ER encourages client employers to hire temp agency staff for risky work.

When accidents happen, the client employer accident record looks clean. So these site employers (who direct and supervise the workers) have little incentive to consider safety for agency workers.

Temp agencies can manage this high accident risk via ER mechanisms: their rate group advantage, light RTW obligations, and strategies to avoid no-lost time.

***How to change the status quo?*** The current ER arrangement puts vulnerable workers at risk, but is economically advantageous to both temp agencies and client employers. Discussions continue with Ontario policy makers.



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For further detail, please see:

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



# Questions?

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