



Bill 139 – Questions and Answers



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Q Our full time employees are entitled to Health Care benefits after three months. Do we need to offer that to “temp” employees?

A No, for three reasons. First, these are agency employees and not yours; second, your benefit program contracts are most likely written so that only your permanent employees are eligible; and third, unless you wish to extend benefits to these “temp” agency employees during the length of the contract, there is no agreement to do so. This is not usual. That is why agencies such as Drake extend an optional, employee-paid benefit program to “temp” employees.

Q How does this (Bill 139) affect benefits for a temporary employee? Is the employer obliged to give full benefits?

A No, per the previous answer. Also, the employer is the agency, not the organization. The organization is the client.

Q Are you saying that temp. help employees through an agency are entitled to the same notice provisions as a regular employee?

A Yes. Bill 139 was written as part of the Employment Standards Act in Ontario to ensure that all employees, permanent or temporary through an agency, are treated equally and with the same rules and regulations.

Q How does Bill 139 extend for employee length of service? What happens if the temp. employee is hired as permanent, does their service carry?

A Bill 139 does not deal with this issue, just as the Employment Standards Act does not deal with this issue. Your internal organization policies prevail for this situation. Many organizations do count either part or all of an employee’s previous service for such things as service awards, benefit eligibility, etc. However, this is totally at the discretion, policies and practices in effect at your own organization.

Q One agency recently asked if we will be paying for stat holidays...as per Bill 139 are we required to pay? Why would they ask this?

A Assignment employees have been entitled to public holidays and public holiday pay since January, 2009. Ask your agency for an explanation of their fees – they may already be charging you for the public holiday pay for the employee.

Q What if the assigned employee is a long-term Drake employee and is only on a short assignment with my company and that placement does not work out and we want to terminate prior to original assignment end date – what kind of notice is required then?

A The notice is based upon the length of service at your company and the contract terms and conditions as agreed upon before the assignment began with your organization.

Q To clarify if the temp. fulfills the contract which finishes on time, are you still required to give notice?

A Only if the temp. employee worked for more than three months with you, and you did not build in working notice into the contract.

Q If the (assignment) employee is terminated from one place due to the client not wanting them anymore and offered to go elsewhere and they turn that opportunity down, are they entitled to pay in lieu of work?

A The answer here is it depends. If the original contract of employment contained a working notice and the contract was fully engaged, the assignment employee would not be eligible for any notice. If the contract was not fully engaged and the employee was terminated, all conditions would apply as they normally would in any situation governed by the Employment Standards Act. Thus, all factors would have to be considered, such as is it a different position that was offered, was the position paid a lower hourly rate, was the position of less responsibility, etc. Thus, the assignment worker could very well be entitled to pay in lieu of work.



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Q How does Bill 139 impact length of service?

A Length of service dictates the amount of termination and severance pay entitlement for the employee. This entitlement is the same as for any other employee governed by the Employment Standards Act.

Q Does this apply to sole proprietors?

A Bill 139 applies to anyone working with temporary employment agencies in Ontario.

Q Who is responsible to give notice to the temporary worker? The client company or the agency?

A The notice is paid by the agency but is charged to the client company by the agency. This is the same situation as the regular pay that is paid to the temporary worker.

Q The agency is still the employer correct? Aren't the agencies still responsible for any liabilities?

A The agency is the employer. Thus, the agency is responsible for all liabilities for all of their employees who are governed by the Employment Standards Act just as any organization is responsible for its employees. Thus, the agency is very careful not to have its employees exposed to any situation that is harmful or dangerous to their health or being.

Q What rights do client companies have to ensure that agencies do not pull a temporary worker out of a company prior to the six (6) month period?

A Although you have no guarantee, this makes no business sense for the agency to withdraw their employee. The agency wants to maximize the length of service with the client because, with greater service, the employee is fully functioning, is obviously performing well, is at maximum productivity, and is keeping the client pleased through good service. No agency can afford to do less. No agency

can afford to break an agreement. Also, if the employee is withdrawn, this is not a guarantee that the client will ask that agency to hire the withdrawn employee on a permanent basis. The client has many other options including going to other, ethical agencies.

Q What is the feeling towards negotiating lower than the 6-month no fee timeframe? Meaning, can I ask that the temp. agency not charge a fee after 4 months instead of 6, or is the legal requirement 6 months?

A Bill 139 states that an agency can not charge a client a fee for an assignment worker who becomes a permanent worker of that client when that assignment worker has worked with that client for six months. However, if you wish to have the opportunity to offer a permanent position to that assignment worker prior to six months, you can do that, but this is something that you should negotiate with the agency when you sign a contract that your agency.

Q Does the Bill apply to IT and NON IT Contractors affiliated with agencies?

A The Bill applies to all people who would be normally governed by the Employment Standards Act in Ontario.

Q Does Bill 139 apply to temp. workers that have been working with the client prior to November 6?

A Weeks prior to November 6, 2009 will not be counted for the purpose of triggering a termination or severance of employment by a lay-off. However, after November 6, 2009, all Employment Standards Act regulations apply to temporary workers.



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Q What about promotion and sales people. They work only when an event happens. It is not an agency. It is a marketing company. The marketing company hires the employees but just for a short period of time, as far as the promotion lasts – 1 week, 2 months.

Q Does Bill 139 apply to employers who use casual employees, offers them shifts and it is up to the employee to accept the shift or not?

Q Is the Bill for temp. people – no agencies – just temp. people that work in events and promotions?

A The answer is the same for all of the above questions. Bill 139 was written for the employees of temporary help agencies. Where agencies are not used, all of the regulations of the Employment Standards Act are enforced. There are some jobs where the Employment Standards Act does not apply. Please consult your Employment Standards Act guide to determine which jobs are governed by the Act.

Q As an unionized employer, our casual employees pick up a shift in January, then may not work for another 6 months. How does the termination provision apply?

A If these casual employees are through an agency, the termination provision is reviewed after the end of each work period. In your example, the termination provision is reviewed at the end of the work in January, and then separately when the employees finish their work six months later. If these employees are not through an agency, and eligible for termination under the Employment Standards Act, they will be considered in the same way as employees through an agency. If these employees are not through an agency, and not eligible for termination under the Employment Standards Act, they will not receive any termination pay.

Q Do all temporary employees receive termination pay?

A No. here are some employees who are exempt from termination pay, as indicated by the Employment Standards Act, including construction workers and ship builders.

Q When do temporary employees receive termination pay?

A Notice is required when temporary employees have worked for certain periods of time that exceed three months, and in accordance with the schedule as set out in the Employment Standards Act. In addition, notice is required in each of these following situations: if the employment terminates before the expiry of the working term or completion of the task; if the working term is more than 12 months; and if the employment continues for three months after the expiry of the original work term or completion of the task.

Q Whom do I call if I have any other questions about Bill 139?

A Please call your local Drake representative, or **Bill Weber**, bweber@na.drakeintl.com, at **416 216 1054**.