



M-14

M-14

ISSN 1180-436X

**Legislative Assembly
of Ontario**
First Session, 39th Parliament

**Assemblée législative
de l'Ontario**
Première session, 39^e législature

Official Report of Debates (Hansard)

Wednesday 8 April 2009

Journal des débats (Hansard)

Mercredi 8 avril 2009

**Standing Committee on
the Legislative Assembly**

Employment Standards
Amendment Act
(Temporary Help Agencies), 2009

**Comité permanent de
l'Assemblée législative**

Loi de 2009 modifiant la Loi
sur les normes d'emploi
(agences de placement
temporaire)

Chair: Bas Balkissoon
Clerk: Tonia Grannum

Président : Bas Balkissoon
Greffière : Tonia Grannum

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

**STANDING COMMITTEE ON
THE LEGISLATIVE ASSEMBLY**

Wednesday 8 April 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**COMITÉ PERMANENT DE
L'ASSEMBLÉE LÉGISLATIVE**

Mercredi 8 avril 2009

The committee met at 1303 in room 151.

EMPLOYMENT STANDARDS
AMENDMENT ACT
(TEMPORARY HELP AGENCIES), 2009
LOI DE 2009 MODIFIANT LA LOI
SUR LES NORMES D'EMPLOI
(AGENCES DE PLACEMENT
TEMPORAIRE)

Consideration of Bill 139, An Act to amend the Employment Standards Act, 2000 in relation to temporary help agencies and certain other matters / Projet de loi 139, Loi modifiant la Loi de 2000 sur les normes d'emploi en ce qui concerne les agences de placement temporaire et certaines autres questions.

The Chair (Mr. Bas Balkissoon): I call the meeting to order of the Standing Committee on the Legislative Assembly. We're here to deal with clause-by-clause of Bill 139, the Employment Standards Amendment Act.

The first motion I have—

Interjection.

The Chair (Mr. Bas Balkissoon): I've got it; sorry. Are there any opening remarks? Mr. Miller.

Mr. Norm Miller: Yes, I just had a question. We just received four of the amendments this morning, about 10 o'clock. It's my understanding that the deadline for submission of amendments was 4 o'clock on Monday. So I'm wondering why—and some are quite lengthy government amendments—we received them just at 10 o'clock this morning, when obviously having them further in advance to be able to analyze them would be much more beneficial.

The Chair (Mr. Bas Balkissoon): Thank you, Mr. Miller. My understanding is that the deadlines are set by the committee and it's an administrative deadline; it's not a hard deadline. The information was provided to all parties as soon as it was available. I understand your concern, that you'd like to analyze it. We'll do our best.

Mr. Norm Miller: Well, then, we'll hope that the government will be able to explain these amendments in detail as we go through this process.

The Chair (Mr. Bas Balkissoon): I'm sure they will. Ms. DiNovo?

Ms. Cheri DiNovo: Yes. I was going to make that point as well. Thanks to Mr. Miller for making it. If it's

an administrative deadline and not a firm deadline, then you could expect that the Progressive Conservatives and the New Democratic Party will probably abide by the firm deadline and not the administrative deadline too. That's all—equal playing field.

But what I want to do first of all, before we even begin the proceedings, is to thank the staff from the Ministry of Labour. I want to thank in particular Workers' Action, who are here today, for all their incredible work on this bill, and my executive assistant, Charles Smith, for his work.

I want to say that we're undoing now—about 15 years later, we're going back to what we had in 1995 and we're undoing some of the more egregious aspects of the Harris legacy in terms of labour, work, in this province. So I want to say that, and I want to thank the people who are primarily responsible for doing the work. Thank you.

The Chair (Mr. Bas Balkissoon): Any members of the government with any comments? Can I move on?

Mr. Vic Dhillon: No comment.

The Chair (Mr. Bas Balkissoon): Okay. The first motion is an NDP motion.

Interjection.

The Chair (Mr. Bas Balkissoon): My apologies.

Section 1 of the bill: I have no amendments in front of me. Shall section 1 carry? Carried.

Section 2 of the bill: There are no submitted amendments. Shall section 2 carry? Carried.

Section 3: I have NDP motion number 1. Ms. DiNovo.

Ms. Cheri DiNovo: I move that section 74.2 of the Employment Standards Act, 2000, as set out in section 3 of the bill, be struck out.

The Chair (Mr. Bas Balkissoon): Any comments?

Ms. Cheri DiNovo: Just by way of explanation, Mr. Chair, this is the part that deals with home care workers. We think that home care workers should be included in this bill.

The Chair (Mr. Bas Balkissoon): Any comments? The government?

Mr. Vic Dhillon: CCACs are public sector service providers and not temporary help agency clients, as is understood in the bill, so we'll be opposing this motion.

The Chair (Mr. Bas Balkissoon): Okay. Mr. Miller?

Mr. Norm Miller: It's interesting that the government is making an exclusion for services that are funded and provided for by the government, that it's good enough for the private sector but not good enough for the govern-

ment. But I think it will be our position that we'll be voting against this, and we'll ask for a recorded vote.

The Chair (Mr. Bas Balkissoon): Mr. Miller has requested a recorded vote.

Ayes

DiNovo.

Nays

Bailey, Delaney, Dhillon, Dickson, Flynn, Miller, Sergio.

The Chair (Mr. Bas Balkissoon): The motion is defeated.

I have motion number 2 from the PC Party, and—yes?

Mr. Norm Miller: Actually, Mr Chair, we'd like to withdraw that. It was our intention to extend the exemption that applies to CCAC workers to all companies that deal with home care, whether it be in your home or not. Our amendment didn't come out quite the way we wanted it to, so we'd like to withdraw that amendment, please.

The Chair (Mr. Bas Balkissoon): Okay. Thank you very much.

On section 3, I have another motion, motion number 3, NDP. Ms. DiNovo.

Ms. Cheri DiNovo: I move that section 74.3 of the Employment Standards Act, 2000, as set out in section 3 of the bill, be amended by adding "For the purposes of this act," at the beginning.

The Chair (Mr. Bas Balkissoon): Any comments? Government?

Mr. Vic Dhillon: Chair, we'll be voting against this one as well, because this change would serve no purpose. As for the Employment Standards Act, 2000, it already applies to temp help agency workers.

1310

The Chair (Mr. Bas Balkissoon): The Conservative Party, any comments?

NDP motion number 3: All in favour? Against? The motion is defeated.

The next motion I have is government motion 3.1. Mr. Dhillon.

Mr. Vic Dhillon: I move that section 74.4 of the act, as set out in section 3 of the bill, be amended by adding the following subsection:

"Same

"(1.1) Where an assignment employee is assigned by a temporary help agency to perform work for a client of the agency, the assignment begins on the first day on which the assignment employee performs work under the assignment and ends at the end of the term of the assignment or when the assignment is ended by the agency, the employee or the client."

This amendment would serve to clarify when a work assignment begins and ends.

The Chair (Mr. Bas Balkissoon): Comments from the official opposition?

Mr. Robert Bailey: Could the parliamentary assistant explain a little bit more what the impact would be on the temporary agencies?

Mr. Vic Dhillon: It's very simple. This amendment makes it clear as to when a work assignment would begin and when it would end.

The Chair (Mr. Bas Balkissoon): Ms. DiNovo, any comments?

Ms. Cheri DiNovo: I'm a little concerned that the language has softened from the original. Again, we just had a chance to look at this amendment; we have not had a chance to speak to a lawyer about it. We prefer the original, so I'll be voting against it.

The Chair (Mr. Bas Balkissoon): Okay. Government motion 3.1: All in favour? Against? The motion carries.

The next one is a PC motion, page 4. Mr. Bailey.

Mr. Robert Bailey: I move that clause 74.4(2)(b) of the act, as set out in section 3 of the bill, be struck out.

The purpose of this amendment would be to eliminate the continuance-of-employment clause. This was recommended by ACSESS. As it currently is written, the bill will hamper a temporary staffing agency's ability to do business in Ontario and will dramatically increase their fees. Temporary staffing will be important when this economy turns around. If we are putting barriers in place that prevent temporary agencies and their employees from functioning well, we will be in effect slowing down this economic recovery.

This amendment is necessary, in our opinion, for the smooth functioning of temporary agencies and the improvement of the Ontario economy.

The Chair (Mr. Bas Balkissoon): Questions or comments? Ms. DiNovo.

Ms. Cheri DiNovo: Absolutely not. This is one of the hubs of this bill, and we will be voting against this Tory motion.

The Chair (Mr. Bas Balkissoon): Mr. Dhillon.

Mr. Vic Dhillon: This section just sets out the existing law. Unless an agency employee has been terminated or quits, he or she is an employee of an agency. We'll be voting against this motion.

The Chair (Mr. Bas Balkissoon): I'll put the vote to PC motion number 4.

Mr. Norm Miller: Recorded vote.

Ayes

Bailey, Miller.

Nays

Delaney, Dhillon, Dickson, DiNovo, Flynn, Sergio.

The Chair (Mr. Bas Balkissoon): The motion is defeated.

The next one is the PC motion on page 5. Mr. Bailey.

Mr. Robert Bailey: I move that part XVIII.1 of the act, as set out in section 3 of the bill, be amended by adding the following section:

“Termination and severance of employment relationship

“74.4.1 Nothing in section 74.3 or 74.4 prevents a temporary help agency from terminating or severing the employment of an assignment employee.”

The effect of our amendment would be to offer assurances that temporary staffing agencies can terminate or sever an employee. This offers some protection in the case of firms concerned about the notice of a continuance of employment.

The Chair (Mr. Bas Balkissoon): Questions or comments?

Ms. Cheri DiNovo: I don't think it's necessary. I think we already have that covered in the Employment Standards Act.

The Chair (Mr. Bas Balkissoon): Mr. Dhillon.

Mr. Vic Dhillon: There's nothing in Bill 139 that would prevent a temp agency from terminating or severing the employment of an assignment employee. I will be voting against this.

The Chair (Mr. Bas Balkissoon): Okay. I'll take the vote on the PC motion on page 5. All in favour? Against? The motion is defeated.

The next motion is a government motion on page 5.1.

Mr. Vic Dhillon: I move that subsection 74.6(1) of the act, as set out in section 3 of the bill, be amended by striking out “in writing” in the portion before paragraph 1.

Assignments can sometimes become available so quickly that there's no time to provide written information before they start. It's reasonable for an agency to provide such information orally at the time that an assignment is offered. That's our explanation for that amendment.

The Chair (Mr. Bas Balkissoon): Questions or comments?

Ms. Cheri DiNovo: We couldn't disagree more. The temporary agency employee writes down the assignment by hearing it over the phone—usually they're writing—from the employer. They can certainly take the few seconds required to write it for the employee as well. We'll definitely vote against it.

The Chair (Mr. Bas Balkissoon): Mr. Miller.

Mr. Norm Miller: It's certainly a concern that I heard from employment agencies that jobs come up at the last moment. Having to have written information would be an impediment to them being able to carry out their business in an efficient way, so we'll certainly support this amendment.

The Chair (Mr. Bas Balkissoon): I'll take the vote on the government motion on page 5.1. All in favour? Against? The motion carries.

Mr. Vic Dhillon: Chair, if I can just have consent for 30 seconds to consult with my assistant?

The Chair (Mr. Bas Balkissoon): I have a request for a short break of 30 seconds. All in favour? We'll give him 30 seconds.

Interjection.

The Chair (Mr. Bas Balkissoon): We'll recess for two minutes.

The committee recessed from 1317 to 1318.

The Chair (Mr. Bas Balkissoon): We'll call the meeting to order again. We'll move to the NDP motion on page 6.

Ms. Cheri DiNovo: I'd like to make a friendly amendment to my own motion, if I might. I move that subsection 74.6(1) of the Employment Standards Act, 2000, as set out in section 3 of the bill, be amended by adding the following:

“The estimated term of the assignment, if the information is available at the time of the offer.”

Mr. Vic Dhillon: Because of the amendment, Chair, we will be in support of this NDP motion.

Mr. Norm Miller: Did you say you were in support of it?

Mr. Vic Dhillon: Yes.

The Chair (Mr. Bas Balkissoon): Does everyone want a copy of the amendment?

Mr. Norm Miller: Yes, please.

The Chair (Mr. Bas Balkissoon): Okay. Just give us a couple of seconds.

Ms. DiNovo, can I get you to read the motion as you want to move it, completely, for the record?

Ms. Cheri DiNovo: You certainly can, Mr. Chair.

I move that subsection 74.6(1) of the Employment Standards Act, 2000, as set out in section 3 of the bill, be amended by adding the following:

“The estimated term of the assignment, if the information is available at the time of the offer.”

The Chair (Mr. Bas Balkissoon): Questions or comments? Mr. Miller?

Mr. Norm Miller: This sounds like a reasonable proposition, so I think we might have unanimous—we might all be agreeable.

The Chair (Mr. Bas Balkissoon): I'll take the vote on the NDP motion on page 6. All in favour? Carried.

The next motion is government motion 6—

Mr. Vic Dhillon: We'll be withdrawing that.

The Chair (Mr. Bas Balkissoon): You're going to withdraw that one? Okay.

The next motion I have is the NDP motion on page 7. Ms. DiNovo.

Ms. Cheri DiNovo: I move that section 74.6 of the Employment Standards Act, 2000, as set out in section 3 of the bill, be amended by adding the following subsection:

“Certification

“(1.1) The temporary help agency shall provide the information required by subsection (1) using a form that contains a certification, signed and dated by the client or an authorized employee of the client, confirming the accuracy of the information.”

Again, this is just for the further safety of the employee, to leave a written record.

The Chair (Mr. Bas Balkissoon): Questions and comments? The government: Mr. Dhillon.

Mr. Vic Dhillon: Chair, we'll be voting against this, because we feel that this would create unnecessary red tape.

The Chair (Mr. Bas Balkissoon): The opposition: Mr. Miller.

Mr. Norm Miller: This province has way too much red tape at this point, and the government seems to do a good job on its own of creating more, so we'll be voting against this.

The Chair (Mr. Bas Balkissoon): I'll take the vote on the NDP motion on page 7. All in favour? Against? The motion is defeated.

The next motion is a government motion on page 7.1.

Mr. Vic Dhillon: I move that section 74.6 of the act, as set out in section 3 of the bill, be amended by adding the following subsection:

"Same

"(1.1) If information required by subsection (1) is provided orally to the assignment employee, the temporary help agency shall also provide the information to the assignment employee in writing, as soon as possible after offering the work assignment."

Our explanation is that this ensures that verbal information when the assignment was offered is followed up in writing as soon as possible afterwards.

The Chair (Mr. Bas Balkissoon): Questions and comments?

Ms. Cheri DiNovo: If we can't get the best of all possible worlds, we'll settle for one slightly better. Yes, I'm going to support it.

The Chair (Mr. Bas Balkissoon): Comments from the PCs?

Mr. Norm Miller: We will support it.

The Chair (Mr. Bas Balkissoon): I'll take the vote on the government motion on page 7.1. All in favour? Carried.

The next motion I have is an NDP motion on page 8.

Ms. Cheri DiNovo: I move that section 74.8 of the Employment Standards Act, 2000, as set out in section 3 of the bill, be amended by,

(a) striking out "except as permitted by subsection (2)" at the end of paragraph 8 of subsection (1); and

(b) striking out subsections (2) and (3).

For a couple of reasons here: First of all, I think this is open for a charter challenge. I don't think the province has a legal leg to stand on to put up any barrier for employment, and certainly I think this is beyond provincial jurisdiction.

The Chair (Mr. Bas Balkissoon): Questions or comments?

Mr. Vic Dhillon: We'll be opposing this motion. The six-month time period is a reasonable compromise. It balances the need of the temporary help agencies to be fairly compensated, the desire of the employees to find stable employment, and the client needs with respect to being able to hire experienced staff. So we'll be voting against it.

The Chair (Mr. Bas Balkissoon): Mr Bailey.

Mr. Robert Bailey: We'll also be voting against it. We believe that the temporary agencies need some form of remuneration for the work they do in helping to train,

advertise, retain the paperwork etc. So we'll be opposing it.

The Chair (Mr. Bas Balkissoon): I'll take the vote on the NDP motion on page 8. All in favour? Against? The motion is defeated.

The next motion is a PC motion on page 9.

Mr. Robert Bailey: I move that paragraph 8 of subsection 74.8(1) of the act, as set out in section 3 of the bill, be struck out.

The purpose of our amendment, if it's passed, would be to allow agencies to continue to charge conversion fees to clients after the first six months. We heard from a number of agencies that if conversion fees are eliminated entirely, they would not be able to conduct business in an orderly manner. There's also concern that the Employment Standards Act is the wrong legislative vehicle to dictate business-to-business relationships.

The Chair (Mr. Bas Balkissoon): Questions or comments?

Mr. Vic Dhillon: This amendment would mean that temporary help agency assignment employees would face unfair barriers to obtaining stable employment. For that reason, we'll be voting against this amendment.

The Chair (Mr. Bas Balkissoon): Ms. DiNovo?

Ms. Cheri DiNovo: Again, what I said for our motion holds here. I'll be voting against it because we feel that we already have a barrier to employment built into this act that shouldn't be there and that would be subject to a charter challenge. I certainly suggest that employers and employees that deal with temporary agencies take up that challenge and refuse to pay the fee and refuse to have the fee charged.

The Chair (Mr. Bas Balkissoon): I call the vote on the PC motion on page 9. All in favour? Against? That motion is defeated.

The next motion is a PC motion on page 10.

1330

Mr. Norm Miller: Seeing as our previous motion was defeated, this one is redundant, so we'll withdraw.

The Chair (Mr. Bas Balkissoon): You'll withdraw? Okay, withdrawn.

The next motion is government motion 10.1. Mr. Delaney.

Mr. Bob Delaney: I move that section 74.10 of the act, as set out in section 3 of the bill, be struck out and the following substituted:

"Public holiday pay

"74.10(1) For the purposes of determining entitlement to public holiday pay under subsection 29(2.1), an assignment employee of a temporary help agency is on a layoff on a public holiday if the public holiday falls on a day on which the employee is not assigned by the agency to perform work for a client of the agency.

"Same

"(2) For the purposes of subsection 29(2.2), the period of a temporary layoff of an assignment employee by a temporary help agency shall be determined in accordance with section 56 as modified by section 74.11 for the purposes of part XV."

The Chair (Mr. Bas Balkissoon): Questions and comments?

Ms. Cheri DiNovo: Yes, I wonder if we could have some explanation from perhaps legal staff on this. It was a late amendment and I think that would be in order.

The Chair (Mr. Bas Balkissoon): Legislative counsel, can we get—oh, you mean ministry staff? Do we have anybody who can come forward and provide some explanation?

Ms. Janice Chung: This motion is going to clarify that the applications of subsection—

The Chair (Mr. Bas Balkissoon): Can you introduce yourself for the record, please?

Ms. Janice Chung: It's Janice Chung, counsel at the Ministry of Labour, legal services branch.

This motion would clarify the application of subsections 29(2.1) and (2.2), the public holiday pay entitlements for an assignment employee, and would ensure that an assignment employee that is not assigned to perform work on the day the public holiday falls is treated the same as any employee on a maternity or paternity leave of absence or on a layoff; that is, they will receive public holiday pay for the day.

Ms. Cheri DiNovo: Thank you.

The Chair (Mr. Bas Balkissoon): Questions or comments? Mr. Bailey, you have a question?

Mr. Robert Bailey: Can you explain that again? If they are—

Ms. Janice Chung: On a paternity or maternity leave of absence or on a layoff, an employee generally receives public holiday pay for a day in which a public holiday falls, if they are on a pat leave, a mat leave or on layoff. This amendment would ensure that an assignment employee who is not assigned to perform work on a day a public holiday falls would receive public holiday pay.

The Chair (Mr. Bas Balkissoon): Questions or comments? Anyone else? Shall I take the vote? I'll take the vote on page 10.1.

Mr. Norm Miller: Recorded vote.

Ayes

Delaney, Dhillon, Dickson, DiNovo, Flynn, Sergio.

Nays

Bailey, Miller.

The Chair (Mr. Bas Balkissoon): The motion carries. Next is NDP motion 11.

Ms. Cheri DiNovo: I move that section 74.11 of the Employment Standards Act, 2000, as set out in section 3 of the bill, be struck out.

The Chair (Mr. Bas Balkissoon): Questions or comments?

Mr. Vic Dhillon: The government has an upcoming motion that responds to this issue raised by this motion. However, the government motion recognizes that certain rules are needed to recognize that temporary help agency

employees may have periods of non-assignment, so we'll be voting against this motion.

The Chair (Mr. Bas Balkissoon): Questions or comments? Anyone else? I'll take the vote on NDP motion 11. All in favour? Against? The motion is defeated.

The next motion is government motion 11.1.

Mr. Bob Delaney: I move that section 74.11 of the act, as set out in section 3 of the bill, be struck out and the following substituted:

“Termination and severance

“74.11 For the purposes of the application of part XV to temporary help agencies and their assignment employees, the following modifications apply:

“1. A temporary help agency lays off an assignment employee for a week if the employee is not assigned by the agency to perform work for a client of the agency during the week.

“2. For the purposes of paragraphs 3 and 10, ‘excluded week’ means a week during which, for one or more days, the assignment employee is not able to work, is not available for work, refuses an offer by the agency that would not constitute constructive dismissal of the employee by the agency, is subject to a disciplinary suspension or is not assigned to perform work for a client of the agency because of a strike or lockout occurring at the agency.

“3. An excluded week shall not be counted as part of the 13 or 35 weeks referred to in subsection 56(2) but shall be counted as part of the 20 or 52 consecutive week periods referred to in subsection 56(2).

“4. Subsections 56(3) to (3.6) do not apply to temporary help agencies and their assignment employees.

“5. A temporary help agency shall, in addition to meeting the posting requirements set out in clause 58(2)(b) and subsection 58(5), provide the information required to be provided to the director under clause 58(2)(a) to each of its assignment employees on the first day of the notice period or as soon after that as is reasonably possible.

“6. Clauses 60(1)(a) and (b) and subsection 60(2) do not apply to temporary help agencies and their assignment employees.

“7. A temporary help agency that gives notice of termination to an assignment employee in accordance with section 57 or 58 shall, during each week of the notice period, pay the assignment employee the wages he or she is entitled to receive, which in no case shall be less than,

“i. in the case of any termination other than under clause 56(1)(c), the total amount of the wages earned by the assignment employee for work performed for clients of the agency during the 12-week period ending on the last day on which the employee performed work for a client of the agency, divided by 12, or

“ii. in the case of a termination under clause 56(1)(c), the total amount of wages earned by the assignment employee for work performed for clients of the agency during the 12-week period immediately preceding the deemed termination date, divided by 12.

“8. The lump sum that an assignment employee is entitled to be paid under clause 61(1)(a) is a lump sum

equal to the amount the employee would have been entitled to receive under paragraph 7 had notice been given in accordance with section 57 or 58.

“9. Subsection 61(1.1) does not apply to temporary help agencies and their assignment employees.

“10. An excluded week shall not be counted as part of the 35 weeks referred to in clause 63(1)(c) but shall be counted as part of the 52 consecutive week period referred to in clause 63(1)(c).

“11. Subsections 63(2) to (2.4) do not apply to temporary help agencies and their assignment employees.

“12. Subsections 65(1), (5) and (6) do not apply to temporary help agencies and their assignment employees.

“13. If a temporary help agency severs the employment of an assignment employee under clause 63(1)(a), (b), (d) or (e), severance pay shall be calculated by,

“i. dividing the total amount of wages earned by the assignment employee for work performed for clients of the agency during the 12-week period ending on the last day on which the employee performed work for a client of the agency by 12, and

“ii. multiplying the result obtained under subparagraph i by the lesser of 26 and the sum of,

“A. the number of years of employment the employee has completed, and

“B. the number of months of employment not included in sub subparagraph A that the employee has completed, divided by 12.

1340

“14. If a temporary help agency severs the employment of an assignment employee under clause 63(1)(c), severance pay shall be calculated by,

“i. dividing the total amount of wages earned by the assignment employee for work performed for clients of the agency during the 12-week period immediately preceding the first day of the layoff by 12, and

“ii. multiplying the result obtained under subparagraph i by the lesser of 26 and the sum of,

“A. the number of years of employment the employee has completed, and

“B. the number of months of employment not included in sub subparagraph A that the employee has completed, divided by 12.”

The Chair (Mr. Bas Balkissoon): Questions or comments? Ms. DiNovo?

Ms. Cheri DiNovo: Again, this is an instance where I think we would benefit from the advice of counsel in terms of the meaning of this.

The Chair (Mr. Bas Balkissoon): Mr. Miller?

Mr. Norm Miller: I believe this is one of the amendments we received at 10 this morning, just a short, little amendment. At first glance, it looks like every temporary help agency in the province is going to be stimulating employment because they’re all going to have to hire a lawyer to have permanently on staff and an accountant so that when the labour police—the provincial government—show up, they aren’t charged, because they’re bound to be in violation of something with the nice,

complicated new rules that you’re putting in place with this legislation.

Certainly it would be good to get some explanation as to exactly what this is going to do.

Mr. Robert Bailey: I’d like to comment. I think it’s patently unfair to get something like this at the last minute without having an opportunity to go through it and understand what it really means. I challenge anyone here, even probably the legal people, that they actually understand what the heck this means. Back home we’d have a word for this, but I wouldn’t use it here. But anyway.

The Chair (Mr. Bas Balkissoon): Ms. Chung?

Ms. Janice Chung: The amendment ensures that the same triggers and windows for calculating a termination and severance apply to an assignment employee; that is, 13 weeks in 20 and 35 weeks in 52. It also clarifies for the purposes of temp help agencies and their assignment employees when a layoff occurs in that sector and it recognizes the differences in that sector. It modifies the formula also to be used to calculate the termination and severance pay for those assignment employees but otherwise maintains the same general legislative provisions of part XV to an assignment employee.

The Chair (Mr. Bas Balkissoon): Ms. DiNovo?

Ms. Cheri DiNovo: Yes, if I might ask you a couple of questions. Bottom line, we’re concerned that assignment employees to temporary agencies have the same termination and severance rights as other employees. Will this guarantee that that happens?

Ms. Janice Chung: It will ensure that the same triggers and windows will apply to assignment employees.

Ms. Cheri DiNovo: So in other words, my motion being shot down to eliminate this section—this will accomplish the same move but with tighter legal constraints? What was the meaning for all of—

Ms. Janice Chung: It will clarify when a layoff actually occurs in the temp help agency sector—the language in paragraph 1, particularly.

Ms. Cheri DiNovo: So this is not going to cost temporary agency employees anything in terms of rights?

Ms. Janice Chung: It will ensure that they have the same triggers and windows as—

Ms. Cheri DiNovo: Right. Okay, thank you.

The Chair (Mr. Bas Balkissoon): Mr. Miller?

Mr. Norm Miller: On point 6, it says, “Clauses 60(1)(a) and (b) and subsection 60(2) do not apply to temporary help agencies.” Can you explain what clauses 60(1)(a) and (b) and 60(2) are, please?

Ms. Janice Chung: Clauses 60(1)(a) and (b) of the act provide that, “During a notice period under section 57 or 58, the employer,

“(a) shall not reduce the employee’s wage rate or alter any other term or condition of employment;

“(b) shall in each week pay the employee the wages the employee is entitled to receive, which in no case shall be less than his or her regular wages for a regular work week....”

Subsection 60(2) provides that where there is no regular work week, “For the purposes of clause (1)(b),” that

being during the notice period under subsection 57 or 58, the employer shall in each week pay the employee the wages the employee is entitled to receive, which in no case shall be less than his or her regular wages for a regular work week. "If the employee does not have a regular work week or if the employee is paid on a basis other than time, the employer shall pay the employee an amount equal to the average amount of regular wages earned by the employee per week for the weeks in which the employee worked in the period of 12 weeks immediately preceding the day on which notice was given." Those clauses would not apply to temporary help agencies or their assignment employees.

The Chair (Mr. Bas Balkissoon): Mr. Bailey?

Mr. Robert Bailey: Did you review these with any of the temporary agencies to see if these could actually be applied, having input from the temporary agencies?

Ms. Janice Chung: That is not the role of legal counsel.

The Chair (Mr. Bas Balkissoon): Ms. DiNovo?

Ms. Cheri DiNovo: I second the concern that we just received this very recently and didn't have time. We're trusting the government in this—that this will protect the employees. We should move on.

The Chair (Mr. Bas Balkissoon): Mr. Dhillon?

Mr. Vic Dhillon: As you can appreciate, the legal staff is here to answer any questions that the opposition parties need clarification on. I know it's quite lengthy, but I'm sure Ms. Chung will be more than willing to answer any further questions that we may have.

The Chair (Mr. Bas Balkissoon): I don't think Mr. Bailey had another. Did you have another question?

Mr. Robert Bailey: Yes. I'd like to know what's behind the 12-week number, the calculation that they use in paragraphs 13 and 14. Can you explain a little more about that? They keep talking about 12 weeks. Math was never my strong suit. Subparagraphs 13(i) and (ii) and 14(i) and (ii) talk about the 12.

Ms. Janice Chung: Paragraphs 13 and 14 just provide an alternate calculation for the purposes of temp help agencies in calculating their severance pay.

Mr. Robert Bailey: An alternate calculation as opposed to—you said an "alternate" calculation. Did I hear you right?

Ms. Janice Chung: Currently in part XV, there is a way of calculating it set out in section 65.

The Chair (Mr. Bas Balkissoon): Ms. DiNovo?

Ms. Cheri DiNovo: One of the concerns we had about the excluded week provision was that temporary employees who are sick or disabled still qualify. Is that what this is intended to provide?

Ms. Janice Chung: The concept of an excluded week is currently in part XV. You will see it in—it's very small print—subsection 56(3).

Ms. Cheri DiNovo: Okay. Thank you.

The Chair (Mr. Bas Balkissoon): Shall I take the vote? Mr. Dhillon?

Mr. Vic Dhillon: A couple of points on the record with respect to our support of this motion: This amend-

ment is being proposed so that a layoff for an assignment employee would resemble that of other employees, and the amended section does set out some differences in order to reflect the fact that employees in this sector may have periods of non-assignment. I just wanted to get that on the record.

The Chair (Mr. Bas Balkissoon): Comments? Mr. Bailey.

Mr. Robert Bailey: Yes, I'd like to ask a question. I understand why legal counsel can't answer—because of being non-partisan and all that—but to the government: Did the government, in your opinion, Mr. Dhillon, consult with any of the temporary agencies with this new amendment to see if it was even practical or able to be implemented by them?

Mr. Vic Dhillon: First of all, I think we had detailed deputations from the temp agency sector. The consensus was drawn based on what was presented to us. I think we all heard what they had to say and I'm sure we can all agree that there's never, ever a perfect solution. We felt that this was the best outcome that we could come to.

Mr. Robert Bailey: Just to clarify, are you inferring that they would be in support of this? If we polled the temporary agencies today, they would be in support of this?

Interjection.

Mr. Robert Bailey: That's just fine. I'm just trying to understand. It's quite complicated and quite legalese. I'm just trying to understand—

Interjection.

1350

The Chair (Mr. Bas Balkissoon): I think he said that you can't please everybody, but they tried their best.

I call the vote on the government motion on page 11.1.

Interjection: A recorded vote, please.

Ayes

Delaney, Dhillon, Dickson, DiNovo, Flynn, Sergio.

Nays

Bailey, Miller.

The Chair (Mr. Bas Balkissoon): The motion carries.

That's the end of section 3. Shall section 3, as amended, carry? Carried.

We'll move to section 3.1. I have an NDP motion on page 12.

Ms. Cheri DiNovo: Yes, this is a bit of a lengthy one, the preamble to which would be simply that we recognize that there's a loophole here because we called it "temporary employment agencies." We're a little concerned that agencies would simply change their name to get around the provisions of this new bill. That's the motivation behind this amendment.

I move that the bill be amended by adding the following section:

"3.1 The act is amended by adding the following part:

“Part XVIII.2	Shall section 6 carry? Carried.
“Employment agencies	Shall section 7 carry? Carried.
“Employment agencies	Shall section 8 carry? Carried.
“74.18(1) In this section,	Shall section 9 carry? Carried.
““employment agency” means a person who, for a fee, recruits or offers to recruit employees for employers.	Shall section 10 carry? Carried.
“No charge for hiring or providing information	Shall section 11 carry? Carried.
“(2) An employment agency shall not request, charge or receive, directly or indirectly, from a person seeking employment, a payment for,	Shall section 12 carry? Carried.
“(a) employing or obtaining employment for the person seeking employment; or	Shall section 13 carry? Carried.
“(b) providing information about employers seeking employees.	Shall section 14 carry? Carried.
“Exception	Shall section 15 carry? Carried.
“(3) A person does not contravene subsection (2) by requesting, charging or receiving payment for any form of advertisement from the person who placed the advertisement.	Shall section 16 carry? Carried.
“Recovery of payment	Shall section 17 carry? Carried.
“(4) A payment received by a person in contravention of subsection (2) is deemed to be wages owing and this act applies to the recovery of the payment.	Shall section 18 carry? Carried.
“No fees to other persons	Shall section 19 carry? Carried.
“(5) An employment agency shall not make a payment, directly or indirectly, to a person for obtaining or assisting in obtaining employment for someone else.	Shall section 20 carry? Carried.
“Exception	Shall section 21 carry? Carried.
“(6) A person does not contravene subsection (5) by paying for any form of advertisement placed by that person.	Shall section 22 carry? Carried.
“Employment agencies to be licensed	Shall section 23 carry? Carried.
“(7) A person shall not operate an employment agency unless the person is licensed under this act.	Shall section 24 carry? Carried.
“Exception	Shall section 25 carry? Carried.
“(8) Subsection (7) does not apply to a person operating an employment agency for the sole purpose of hiring employees exclusively for one employer.	Shall section 26 carry? Carried.
“Regulations	Shall section 27 carry? Carried.
“(9) The Lieutenant Governor in Council may make regulations governing the licensing of employment agencies.”	Shall section 28 carry? Carried.
You can see that the reason for this is simply to extend the meaning of this bill to agencies that may not call themselves part of a temporary help agency. It is in line with some BC regulations on this topic as well.	Shall section 29 carry? Carried.
The Chair (Mr. Bas Balkissoon): I will have to rule this motion out of order because it's beyond the scope of the bill that is in front of us. Bill 139 deals with temporary employment agencies, so I will rule that that is out of order.	Shall section 30 carry? Carried.
Ms. Cheri DiNovo: Just stay tuned for the employment standards amendments, as tabled by my office, that will include this. Thank you.	Shall section 31 carry? Carried.
The Chair (Mr. Bas Balkissoon): Okay. We'll move to section 4. Are there any comments? Shall section 4 carry? Carried.	Shall the title of the bill carry? Carried.
We'll move to section 5. Shall section 5 carry? Carried.	Shall Bill 139, as amended, carry? Carried.
	Shall I report the bill, as amended, to the House? Agreed.
	Anything else? Mr. Miller.
	Mr. Norm Miller: I would just like to once again protest the fact that we received the significant amendments so late, just before the start of this committee meeting. In fact, for the last government amendment, which was several pages long, even the key stakeholders like ACSLESS, when shown it, could not figure out whether they were in favour of or against the amendment. So I would just simply say that in the interest of better legislation, obviously, having more time to look at the amendments is preferred. Unless you're a labour legal expert, to be asked to know exactly what's going to happen with some of these long, complicated amendments is virtually impossible. I just want to record that protest from the official opposition.
	The Chair (Mr. Bas Balkissoon): Thank you very much. Duly noted. Mr. Dhillon.
	Mr. Vic Dhillon: Thank you very much, Chair. I just want to get on the record again that we do have ministry staff here, and the legal staff as well, to explain, as they have explained some of the questions that were brought forward by the opposition parties. It doesn't appear to me that there were any questions that were unresolved or unanswered, so I just wanted to get that on the record and thank everybody, and thank you, Chair.
	The Chair (Mr. Bas Balkissoon): Thank you all very much. The committee is adjourned.
	<i>The committee adjourned at 1358.</i>

CONTENTS

Wednesday 8 April 2009

Employment Standards Amendment Act (Temporary Help Agencies), 2009, Bill 139, Mr. Fonseca / Loi de 2009 modifiant la Loi sur les normes d'emploi (agences de placement temporaire), projet de loi 139, M. Fonseca	M-177
--	-------

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Chair / Président

Mr. Bas Balkissoon (Scarborough–Rouge River L)

Vice-Chair / Vice-Président

Mr. Kevin Daniel Flynn (Oakville L)

Mrs. Laura Albanese (York South–Weston / York-Sud–Weston L)

Mr. Bas Balkissoon (Scarborough–Rouge River L)

Mr. Bob Delaney (Mississauga–Streetsville L)

Mr. Joe Dickson (Ajax–Pickering L)

Mr. Kevin Daniel Flynn (Oakville L)

Ms. Sylvia Jones (Dufferin–Caledon PC)

Mr. Norm Miller (Parry Sound–Muskoka PC)

Mr. Mario Sergio (York West / York-Ouest L)

Mr. Peter Tabuns (Toronto–Danforth ND)

Substitutions / Membres remplaçants

Mr. Robert Bailey (Sarnia–Lambton PC)

Mr. Vic Dhillon (Brampton West / Brampton-Ouest L)

Ms. Cheri DiNovo (Parkdale–High Park ND)

Mr. Reza Moridi (Richmond Hill L)

Also taking part / Autres participants et participantes

Ms. Janice Chung, counsel,

Ministry of Labour, legal services branch

Clerk / Greffière

Ms. Tonia Grannum

Staff / Personnel

Ms. Mariam Leitman, legislative counsel