



# **Temporary Employment Agency Consultation – Phase 1**

Stakeholder Submissions

May 6, 2022 to June 30, 2022

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June 24, 2022

Consultation Secretariat  
Workplace Safety Insurance Board  
200 Front St West  
Toronto ON M5V 3J1

Dear Secretariat,

Thank you very much for allowing us the opportunity to participate in the consultation process. Below you will find Aerotek's responses to the six questions you proposed.

1. Temporary Employment Agencies operate very differently in scope and structure. Some strictly provide day labour, meaning they supply some people to one location one day and may move those people on to another location the next. Some TEA's keep their employees at one location for months or years. Some TEAs only deal with one client while others deal with many different clients. Some staffing firms specialize in a particular industry and some staff a wide variety of industries. There are no two staffing firms alike in their makeup and structure.

Aerotek is a large staffing firm that provides temporary employment services to a variety of clients and typically engages in contracts with a client for no less than three months, we do not supply day-labour.

We sell our services to a client marked up from our employee's wage. We staff a variety of positions in a variety of industries. Safety is built into our contracts, ensuring our clients agree to follow all health and safety law, allow us access to their site to check on the safety of our employees. We also set out training responsibilities in our contracts, ensuring responsibilities are established and defined.

Our contracts with our employees are open-ended. If one assignment ends for the employee, it is our goal to re-deploy them to another client for a minimum of 3 months or have the client take them on permanently. Depending on the length of time off work, our employees may not need to sign another contract.

From time-to-time we do direct placements at a client. We recruit the employee for the client directly. In direct placements, our candidates do not sign an agreement with us, and they are never considered our employee. We do have specific agreements for our clients in those type of engagements.

Overall safety is a joint responsibility between our clients and us. We are hiring and vetting out the employees and we are providing performance reviews and general training. Our clients are providing direct daily supervision to our employees and site-specific training.

We vet our clients upfront; we document their safety statistics and safety program elements. We discuss return to work options and ask for job hazard assessments. We have specific markets that we will not staff based on safety concerns and statistics. Our sales teams will fully qualify the position(s) we are placing people in. Our team ensures we fully understand the position, the qualifications and certifications necessary prior to placing our employees on site. It is recommended that they visit the facility and see the station(s) our employee(s) will be working at to fully understand and prepare our employee.

Safety is vital in all processes; we have a moral and legal obligation and financial interest in ensuring our employee's safety. Our employees are our capital and if they cannot work, it is a financial burden to us. We have been a member of Safety group for over 15 years and have been able to build and manage our safety program through that program.

2. Aerotek, supplies clerical work to heavy labour positions all under one contract. We do not get multiple contracts for different types of labour or divisions at the same client, as we only have one extensive contract for all divisions.

3. Yes, multi-year contracts are normal. If there are no concerns or need, we may go 5 -10 years without signing a new contract.
4. If there are changes in costs over a year, we assume that our markup will cover that, and it impacts the profits for that account in that year. Our hope is that the following year we can adjust our practices and those costs will decrease and renegotiation isn't necessary. If there is a set cost that we know will remain stable or a pattern of high injuries, we will attempt to re-negotiate the contract.
5. While Aerotek understands the need for rate reform. The process you have chosen has missed the mark as it relates to staffing firms in 4 of the 6 key goals you set out to accomplish for the New Rate Reform. These goals are based on the document Rate Reform: Key Goals (<https://www.wsib.ca/en/rate-framework-archived-key-goals>)
  - a. Goal one: Clear and consistent structure – For a staffing firm this structure is anything but clear and consistent. We gather our client's NAIC's code, and then must remit under a different "staffing specific" code. This causes a lot of adjustments and reporting issues as it is then not consistent with the client's NAICs code.
  - b. Goal two: Fair allocation of Premiums – fair premiums based on employer's risk and claims experience. While for a general industry the New Rate Reform meet this, as a staffing firm this goal is not accomplished. A previous concern was industries placing contractors in riskier positions under the staffing firms care to hide costs. This rate reform does not address those issues, businesses can still do this without seeing the direct cost.

The New Rate Reform directly penalizes Aerotek's clerical work division. That division provides clerical staff to a wide variety of industries. Previously we could pay the TEA clerical rate if they were not exposed to a labour environment. Now, that division is forced to pay a much higher rate even though the risk of injury extremely low and has not changed.
  - c. Goal three: Transparent and Understandable – The New Rate Reform does not promote transparent and understandable participation as it relates to staffing firms. This program will not show a client the direct cost of an injury to a staffing firm's employee on their site. The staffing firm will still incur the direct cost of that claim and there is still no incentive for the client to aid the staffing firm.
    - The new program deters the staffing firm from promoting return to work. With the staffing firm's premiums now being divided into 34 different rate groups, given the expanded pool of rate groups, the staffing firm may decide to top out on the expected costs of that rate group, as the costs to modify the worker are greater than the increase to premiums the firm will see in that rate group.
  - d. Goal four: Efficient and effective for the employer community – this program has been anything but efficient and effective for staffing firms. The amount of time it is taking to report premiums and manage costs in each rate group is leaving less time for proactive safety measures and is causing undue stress to our business.
6. While we understand the need for change and being able to track costs across industries, the New Rate Reform unfairly targets the Staffing Industry.

We understand that there are bad apples in this industry, we work very hard to educate or eliminate those businesses. The new Licensing program passed under Ontario law will help aid in eliminating those businesses that give the staffing industry a bad reputation. This will help eliminate the need for WSIB to try and accomplish that.

In the United States they have created a document called the Temporary Worker Initiative and this helps both parties understand their roles and responsibilities under Occupational Health and Safety Law. It would be helpful to create a document with the same intent coming from WSIB and/or the Ministry of Labour outlining the staffing firm's roles and responsibilities as well as a client's roles and responsibilities and best practices under both OHS law and WSIB's policies and best practices. In this document you could spell out return to work initiatives and the greater impact of the cost to industries when a Temporary employee is injured. This could also spell out training requirements, this would provide better protection to those employees as well and eliminate the need to unfairly target staffing firms in the New Rate reform.

Again, I would like to thank you very much for allowing us to provide feedback on this topic. While we agree the Rate Reform was necessary, the changes that have been made have unfairly targeted staffing firms and do not meet the key goals that this reform was intended to meet.

Sincerely,

Meg Artymko

*Regional Health and Safety*  
Aerotek ULC



June 29, 2022

**Consultation Secretariat**

Workplace Safety and Insurance Board  
200 Front Street West

Toronto, Ontario M5V 3J1

Dear Consultation Secretariat,

We are grateful that our industry has your attention and the WSIB recognizes there is a serious issue with the proposed rate framework for Temporary Employment Agencies (TEAs).

Founded over 33 years ago in Ottawa, we are a 100% Canadian-owned and operated company that employs 210 permanent staff members. On average, we make over 8,600 temporary and contract professional placements annually and hold over 21,000 candidate interviews per year. We exclusively place highly skilled professional office workers — for example, IT and professional services workers, healthcare and scientific workers, and office administration clerical support — who are well compensated and in very high demand in today's competitive labour market. We are a Platinum Member of Canada's Best Managed Companies, certified under WBE Canada as a Women's Business Enterprise and recognized as an official Employer Partner of the Canadian Centre for Diversity and Inclusion (CCDI). We pride ourselves on our exemplary ethical standards and take intentional steps to create an inclusive, equitable environment for all our workers.

While we appreciate the opportunity to resubmit our recommendations to the Consultation Secretariat, we are concerned that the questions supplied are so generic and high-level, that the Secretariat may not develop a complete understanding of this complex issue. We would be pleased to supply additional information and background material in support of our recommendations if given the opportunity.

Please find our firm's contributions to the request for consultations attached (Appendix A).

Sincerely,

Kathryn Tremblay  
Co-Founder and CEO  
Altis Recruitment

Cindy Spence  
Chief Financial & Operating Officer  
Altis Recruitment

## Appendix A: Our Contribution to the Request for Consultation

1. *What do you think the WSIB should be aware of about how the TEA industry generally operates (e.g. the typical types of supplied labour, business models, employment relationships with supplied labour, health and safety practices)?*

Please know that since the TEA industry covers such a broad spectrum of industries, clients and roles, it is quite limiting and possibly misleading to summarize how it “generally operates.” The WSIB needs to differentiate between high-risk and low-risk workers, placements and staffing firms.

We define these as:

- High risk: Industrial, patient healthcare, trucking, driving and assembly line manufacturing workers.
- Low risk: Professional office workers (referred to as “**knowledge workers**” throughout this document) such as highly skilled workers in IT and professional services, healthcare and scientific workers in executive and office environments, and office administration clerical support.

Given this variation, the criteria you list above (e.g., the typical types of supplied labour, business models, employment relationships with supplied labour, health and safety practices) also vary considerably from one staffing firm to the next since many firms specialize in only specific areas of staffing (for example, administrative office staffing, light industrial staffing or trucking).

Temporary employment agencies like ours are part of the economic fabric of Ontario and all of Canada. Our firm was founded in Ontario over 33 years ago, is 100% Canadian-owned and operated, places thousands of knowledge workers in mission-critical roles every year and will continue to be there supporting Canadian employers as the economy continues to rebuild post-pandemic. Recognized as a thought leader and one of the best-managed companies in the industry, we are committed to providing Ontarians with meaningful and rewarding employment opportunities.

Although we are classified as a TEA, all our placements are **highly skilled and highly paid knowledge workers**. We deliberately do not place workers in industrial settings or high-risk positions, so the previously proposed “one-size-fits-all” rate framework for TEAs was neither fair to us nor reflective of the nature of our business and the risks associated. It would have resulted

in an **overall increase of 2073% in our WSIB premiums**, and hence, would mark the end of our business.

Our business intentionally focuses on knowledge worker placements with a low risk of injury, including a mixture of temporary workers and subcontractors (independent operators). We hold ourselves to a high health and safety standard. Before sending a worker on-site, we work with our clients to understand their health and safety practices, evaluate the risk of accepting the placement and decline when necessary. We also educate our candidates on their health and safety rights and responsibilities. Our business intentionally steers clear of high-risk industries, high-risk clients and high-risk roles -- period.

It is important for the WSIB to understand that TEAs compete for contracts with large, multinational consulting firms such as CGI, Deloitte and PwC, which are treated differently by the WSIB even though **they also supply labour to their clients**. Under the established rate framework, the WSIB does not require these firms to pay premiums based on their client's rate class. So, why should TEAs be required to do so?

Under the previously proposed TEA framework, our organization would pay **16 times more** in WSIB premiums than these competitors, which would put us at a severe competitive disadvantage and virtually eliminate any chance of us winning bids on the same contracts. We expect nothing less but to be treated equally with our competitors, with our own rate class, or in the rate class of our competitors. The proposed rate model unfairly targets TEAs and greatly impacts our ability to compete with these large firms. We are asking the WSIB to level the playing field. Allowing these firms to continue with their own consulting rate class is inequitable.

It is also important for the WSIB to understand that TEAs like ours have different relationships with the candidates we place. We place workers who are treated like employees of our organization (T4 employees), as well as Independent Contractors or Sole Proprietors, all of whom are in the knowledge worker space. Our firm has consistently paid premiums for all our placements (T4 employees, Sole Proprietors and Independent Contractors alike) because there was alignment between the associated risk and the premiums the WSIB imposed. Under the proposed TEA rate framework, however, there is no longer alignment between the two. We are certain that the WSIB is experiencing increased requests from staffing firms looking for independent assessments in an effort to realign the associated risk with premiums.



2. *In cases where a TEA supplies multiple types of labour to a client, do they generally obtain one contract for all the labour supplied to the client, or do they obtain multiple contracts (one for each type of labour being supplied)?*

Once again, there is such great variability among clients, there is no single, definitive answer for this question.

Each client varies in terms of their staffing procurement process. Some clients organize it to reflect categories of workers, while others have single procurement teams with multiple vendor lists organized according to the specialization of the TEA.

Our staffing firm specializes in placing knowledge workers ranging from Office Administrative Clerical Support to IT Consultants to Senior Professional Consultants, and our client contracts are specific to our area of staffing expertise.

3. *Are multi-year contracts between TEAs and clients common? If yes, how long do they typically last?*

Yes, multi-year contracts between TEAs and clients are common. Contracts have a typical length of 3-5 years, with option years. While the WSIB assumes that all burden can be easily passed onto clients, this is not the case when TEAs are tied to multi-year contracts, with option years, which do not allow for pricing changes. In a competitive market, there is also no ability to cushion bidding rates to account for potential cost increases.

4. *In cases where TEAs have multi-year contracts with clients, how do they currently account for increases or decreases in WSIB premium costs and/or other business costs that occur during the term of the contract? For example, if a TEA's costs increase one year, does the rate charged to the client also increase, or is it fixed for the entire term of the contract?*

There is no single, definitive answer for this question.

Most contracts have a fixed rate structure with no room or flexibility for burden/cost increases. Some contracts do allow for small burden/cost increases; however, they would never allow for unreasonably high increases, which is what the WSIB has proposed imposing on staffing firms with its new rate framework.

Once under a contract for services, there is no ability for staffing firms to pass increases in burden on to their clients. These increases may also be impossible to absorb by staffing firms, as we already compete on razor-thin margins.

The WSIB is not the only burden type of expense that impacts staffing firms. Firms like ours also respond to a variety of margin pressures – from CPP increases, to minimum wage hikes, to inflationary pressures.

When the WSIB introduced the proposed rate increases for 2020, they were not mindful of the impact they would have on TEAs. The WSIB gave TEAs only 4 months' notice of the rate increases. How is this reasonable? Even in 2022, the WSIB has moved forward with a rate increase of 5%, followed by 10% for 2023. How is it reasonable for any company to absorb these levels of increases when most of their business operates on fixed contracts?

Since the WSIB has a monopoly on workplace safety insurance (there is no option for private coverage), and it is dictating unreasonable rate increases, we feel there should be rate limits imposed on the WSIB. The WSIB should look to their government counterparts to develop a rate framework and transition policy that is transparent and communicated well in advance, especially when cost increases are being announced.

**Example:** The federal government introduced rate changes to CPP that would see increases in two phases over a 7-year period. The first phase involves a gradual and modest increase in the contribution rate, with rates rising by 1% over 5 years. Their implementation plan was announced well in advance, which gave businesses time to prepare.

As mentioned in the reply to question 1, our firm competes for contracts with large multinationals such as CGI, Deloitte and PwC, which are classified as consulting firms. These firms, which are in Class L, bid on Government (Class D2) contracts with a WSIB burden of 0.22%, whereas a TEA's burden is 16X higher at 3.51%. In the "lowest-price-wins" model that clients use to award contracts, the WSIB's proposed rate framework for TEAs will destroy any chance TEAs have to compete against these large consulting firms.

In sum, since most cost burden increases will have to be absorbed by TEAs, we cannot afford unpredictable, excessively large increases in burden year over year when bidding on contracts as we would no longer be able to compete. The WSIB needs to support our contracting constraints with rate changes that are predictable (announced well in advance) and modest (1% to 3%).

5. *Do you have any feedback about the approach of classifying TEAs in the same classes as their clients and generally aligning their rates with the rates of their clients' classes? For example, are there circumstances, or types of supplied labour, where you believe that approach is not appropriate?*

We wholeheartedly believe that the WSIB's approach is not appropriate for knowledge worker staffing firms like ours. We believe the WSIB missed their objectives for the following reasons:

- In the simplification process of the new framework, the WSIB misaligned the staffing industry's rate classes with their client's new classes. Many client employers that had multiple rate groups saw their number of rate groups drop to their predominant class. In many situations, the organization's predominant class no longer reflects the knowledge worker positions of the organization. When clients had multiple rate groups, knowledge worker staffing firms aligned with their client's knowledge worker rate group.
  - Example: Client A in the manufacturing industry has 2 rate groups under the old framework. One rate group for Manufacturing and one rate group for their office staff. Under the new framework, their predominant rate class is manufacturing. Staffing Firm A supplies clerical workers. Under the old framework, the supply of labour aligned to the client's clerical business activity. Under the new framework, the staffing firm and the client are misaligned.
- The WSIB's intention was to simplify the classification system by moving from 155 rate groups to 35 rate classes. Again, the WSIB did not consider TEAs and did not simplify the program for them. In fact, it did the complete opposite. In the new "simplified" rate framework, TEAs saw the number of rate classes explode. Our firm was assigned 32 of the 35 rate classes, and our systems needed to be overhauled with the added burden of having to track our clients' rate classes and associated placements. We are fortunate that our internal systems development team was able to reprogram our CRM to respond to such a dramatic change in tracking and calculating payroll burdens (many of our competitors are working from Excel spreadsheets). In addition, the time required to track down the appropriate rate classes for over 3,000 clients was an enormous undertaking, with the WSIB providing no support in 2019.
- The WSIB's approach takes us further away from the risk associated with our industry and the premiums we pay. Prior to the new rate framework, our premium rates were already not aligned to our risk level and the WSIB was already overcharging our

industry. In a recent FIPPA Access Request, it was determined that our industry's accident-to-cost ratio was only 2.4%. The actuary group at WSIB has categories fully funded when the accident-to-cost ratio floats between 40% and 60%. Our industry was already heavily overpaying, and yet the proposed rate framework would have seen our premiums rise by over 2000%. How can the WSIB justify this proposed rate increase? It makes no sense, is not aligned to risk and the industry was never consulted on it. We sincerely hope this consultation will lead to an outcome that permanently fixes this injustice.

- Speaking of injustice, in 2021 our claim costs were \$45.00, and yet we paid thousands of dollars in premiums. Under the proposed rate framework, our total premium costs will rise from thousands per year to millions per year – despite our extremely low accident and injury rate and the fact that we place **knowledge workers**, who largely work from an office or a home office. Despite our vigilance, every single rate class is increasing at unmanageable percentages, with the “smallest” increase being 169% for Class L, and the largest being over 3000% for Class G3. It is ludicrous for the WSIB to continue to overfund our industry's claim cost, and even more absurd to demand even higher premiums.
- The WSIB's approach impacted TEAs' competitiveness by allowing our major competitors the advantage of being classified in Class L (Professional, Scientific and Technical). Part of the WSIB's mandate is to ensure a level playing field, and we struggle to understand how this approach is fair. To highlight the extreme disadvantage the WSIB will create for TEAs, we call your attention to the example below:
  - Our firm recently submitted a bid for a multi-year, multi-million-dollar contract for Project Management Services. The contract will be awarded to one supplier for three years, plus three, one-year irrevocable options allowing the client to extend the term of the contract. Pricing was weighted as a major factor for the subsequent award. Under the new framework, keeping all other cost and profit margins in play, and only adjusting for the WSIB rate differential, our bid submission would have to be \$285,000 higher to cover our exorbitant WSIB rates, which most definitely would result in a bid loss. The rate divergence between Class L \$0.22 and D2 \$3.51 unfairly targets TEAs, and we will not be able to compete if we must pay these rates in this competitive market. The rates would be detrimental to our firm, our employment numbers and our livelihood.

- Another major injustice of the rate framework: most of our clients do not pay WSIB premiums for workers that they hire directly. Yet, when we place a worker in a bank (K \$0.91), professional services (L \$0.22), medical office (N1 \$1.37) or a membership association (P \$1.40), we are assigned the rate class that “most closely matches” their industry. These employers are not required to be covered by the WSIB, and yet the WSIB is imposing a fictitious and unjustified rate that does not relate to the risk of injury of professional staffing at these workplaces.
- The WSIB’s approach of assigning premiums to classes is not consistent. Some industries are broken out into sub-classes by risk levels.
  - For example: The Manufacturing Industry and Construction Industry are broken into many classes/sub-classes based on risk levels. The Manufacturing Industry has six sub-classes that clearly separate risk level, as rates go from \$0.24 (computer and electronic manufacturing) to \$2.11 (non-metallic and mineral manufacturing). Construction likewise has six sub-classes, with rates ranging from \$1.70 (building equipment construction) to \$4.11 (foundation, structure and building exterior).
  - Public Administration, on the other hand, is considered a one size fits all, and yet it covers many high-risk industries in government such as: defense services (armed forces, foreign military aid, military police, air bases, naval bases), police services, firefighting services and correctional services, as well as low-risk industries such as labour and employment services, regulatory services, and other public administration clerical functions like programming. How is a “one-size-fits-all” approach logical based on the wide variety of industries covered by this class? The WSIB is lumping in high-risk frontline workers with low-risk clerical staff.

This approach has a direct impact on the livelihood of TEAs in Ontario. TEAs do not staff police, firefighters, correction workers, or armed forces, but instead place knowledge workers such as economists, policy writers, administrative staff, computer programmers and accountants. The WSIB is unfairly targeting TEAs by lumping together all public administration roles into one industry class.

6. *Is there any other information the WSIB should be aware of when assessing the rate setting approach for TEAs?*

While we wholeheartedly support the health and safety initiatives of the WSIB, the previously proposed rate framework will be a disaster for all Temporary Employment Agencies in Ontario. We urge the WSIB to keep Ontario open for business, reduce the red tape and change this climate of ever-increasing high costs. Our collective goal is to keep our province competitive, productive and fair, and keep workers engaged in meaningful, well-paying, safe jobs.

**We believe there is an opportunity to overhaul and improve the rate framework introduced by the WSIB in the following ways:**

1. Remove the requirement of TEAs to pay their client's premiums (Section 2(4) of WSIB Regulation 175/98). No other province operates this way, and the responsibility for health and safety lands with us, not with our client. The risk associated with placing knowledge workers does not warrant a 2000% increase in premiums with a \$2.6M price tag.
2. Create a rate class code for low-risk Professional Staffing Firms separate from other codes in other industries. The WSIB needs to recognize that when they implemented the rate framework, and clients dropped to their predominant class, they misaligned our knowledge worker placements with our client's knowledge worker positions. Our industry represents low-risk jobs. We need our own low-risk class code.
3. The new rate class code must align with our competitors' rate class codes. The WSIB needs to address the inequality it created with the new rate framework and recognize that we compete with consulting firms that supply labour. These firms have the privilege of being recognized in the Service Industry, under Class L (Professional, Scientific, and Technical). TEA alignment to Class L would ensure a fair and competitive playing field with our consulting-type competitors.
4. The WSIB must safeguard the future framework by implementing a system where potential annual increases are measured and manageable. Staffing firms need to be able to plan for long-term contract awards with predictable minimal increases of 1% to 3%.
5. The WSIB needs to explore the implications of the recently passed Bill 88, Working for Workers Act, 2022. Effective January 1, 2023, the Employment Standards Act will include new definitions for business consultants and information technology consultants. If these workers are automatically

excluded from the ESA, the WSIB should also exclude them from coverage. Shouldn't the WSIB and the Ontario government treat these types of workers the same? This updated definition could simplify WSIB's Independent Contractor Ruling process and would ensure that all staffing firms operate on the same competitive playing field. The Ontario government continues to work to make Ontario the first choice for businesses, and the implementation of these definitions would align with its goals of removing regulatory roadblocks for businesses and reducing costs. (We will also be writing to the Minister of Small Business and Red Tape Reduction about this specific issue.)



Association of Canadian Search,  
Employment and Staffing Services

Association Nationale des Entreprises en  
Recrutement et Placement de Personnel

June 29, 2022

VIA E-MAIL

Consultation Secretariat  
Workplace Safety and Insurance Board  
200 Front St. West, 17th Floor  
Toronto, On  
M5V 3J1

Dear Consultation Secretariat

**RE: Submissions of the Association of Canadian Search, Employment & Staffing  
Services on the “WSIB Rate Framework Reform Consultation”**

**Introduction**

The Association of Canadian Search, Employment & Staffing Services (ACSESS) is the only association representing the staffing industry in Canada. ACSESS represents over 1000 staffing service offices across Canada. ACSESS members provide placement and executive search services, and temporary and contract staffing to the public sector and virtually every type of business.

The mission of ACSESS is to promote the advancement and growth of the employment, recruitment and staffing services industry in Canada. It also serves as Canada's only national advocate for ensuring professional ethics and standards in this industry. All member companies pledge annually to uphold the Association's Code of Ethics and Standards which promotes ethical treatment of employees and clients, and adherence to all applicable laws including human rights and occupational health and safety legislation.

ACSESS members have worked closely with OHS and Workers' Compensation boards across the country to improve worker safety and to reduce accidents. As you are aware, ACSESS has been actively involved with senior representatives of WSIB in shaping policy which improves the performance of the staffing industry as a whole.

ACSESS has made a number of submissions to the WSIB Rate Frame Reform Consultation and is now accepting the WSIB's invitation to respond to the “*Temporary Employment Firm Rate Setting Consultation*”. The comments below reflect the position of ACSESS as a whole does not necessarily represent the views or experiences of individual ACSESS members.



1. *What do you think the WSIB should be aware of about how the TEA industry generally operates (e.g. the typical types of supplied labour, business models, employment relationships with supplied labour, health and safety practices)?*

The members of ACSESS are proud to be at the cutting edge of health and safety practices in the staffing industry in Ontario and across the country. It is important to appreciate that the staffing industry serves virtually every aspect of the Ontario economy. ACSESS members supply employees in both the public and private sector to virtually every industry. There really is no “typical” type of employee referred to clients, as the staffing industry touches virtually every type of business. There also is no “typical” contract in this diverse and dynamic industry. The terms of each contract are a matter of negotiation between the staffing firm and the client. However, there is no question that workers’ compensation costs are a factor that every firm must consider when assessing overhead costs.

2. *In cases where a TEA supplies multiple types of labour to a client, do they generally obtain one contract for all the labour supplied to the client, or do they obtain multiple contracts (one for each type of labour being supplied)?*

There really is no “standard” or “typical” contract where firms supply workers for different types of staffing needs. As was referenced above, these issues are matters of negotiation between staffing firms and their clients. It is the view of ACSESS that there really is no significant benefit to the WSIB in trying to assess a “typical” contract. Unlike in the construction industry, where standard form contracts are quite common in certain contexts<sup>1</sup>, each ACSESS member creates their own contract and negotiates their own terms with clients.

3. *Are multi-year contracts between TEAs and clients common? If yes, how long do they typically last?*

ACSESS reiterates the comments above that there are no “typical” contracts in this industry in light of the diverse nature of staffing firms which operate in almost every sector of the economy. However, ACSESS has a significant number of members that have negotiated multi-year agreements in both the public and private sector. It is very uncommon for ACSESS members to have the right to renegotiate rates during a multi-year contract. Therefore, the firms have to absorb increases in WSIB costs over the duration of the contract.

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<sup>1</sup> See for example at <https://www.ccdc.org/documents/>

4. *In cases where TEAs have multi-year contracts with clients, how do they currently account for increases or decreases in WSIB premium costs and/or other business costs that occur during the term of the contract? For example, if a TEA's costs increase one year, does the rate charged to the client also increase, or is it fixed for the entire term of the contract?*

ACSESS reiterates the comments above that there are no “typical” contracts in this industry in light of the diverse nature of staffing firms which operate in almost every sector of the economy. However, ACSESS members have noted that it is a challenge to realistically reflect workers’ compensation costs in overhead under the current WSIB rate setting system. ACSESS members generally don’t become aware of the rates until after a contract has been negotiated.

As a practical consequence of this reality, staffing firms are forced to absorb any increases in rates. This issue is particularly challenging where staffing firms have entered into multi-year contracts with no opportunity to increase rates over the life of the agreement. It should not be forgotten that ACSESS members who incur the financial costs of scrupulous compliance with occupational health and safety and employment legislation operate under very tight profit margins. According to Statistics Canada, the operating profit margin<sup>2</sup> for staffing firms was around 3% between 2016 and 2019.<sup>3</sup>

In contrast, consulting firms which directly compete with staffing firms for supply of workers (particularly in information technology field) operated with operating profit margins of between 26% and 31% between 2012 and 2019.<sup>4</sup> In light of these tight profit margins, staffing firms are particularly sensitive to sudden increases in overhead costs.

It should also be noted that staffing firms are being forced to pay premiums on employees who are referred to clients that are not covered by Schedules 1 or 2 (i.e. banks, law firms etc.). This means that staffing firms are being forced to pay premiums on industries that the Ontario Legislature has determined are not required to have WSIB coverage. It makes no sense to require staffing firms to pay premiums on employees that the government has determined do not require WSIB coverage.

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<sup>2</sup> Operating profit margin is calculated by Statistics Canada as follows: operating revenue minus operating expenses, expressed as a percentage of operating revenue. The derived figure excludes corporation income tax paid by incorporated businesses and individual income tax paid by unincorporated businesses.

<sup>3</sup> See figures from Statistics Canada at <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=2110006301>

<sup>4</sup> See figures Statista Research Service at <https://www.statista.com/statistics/1245295/management-consulting-operating-profit-margin-canada/>

5. *Do you have any feedback about the approach of classifying TEAs in the same classes as their clients and generally aligning their rates with the rates of their clients' classes? For example, are there circumstances, or types of supplied labour, where you believe that approach is not appropriate?*

ACSESS has historically been supportive of the general principle that the rates paid by ACSESS members should generally align with the rates paid by clients in order to ensure that workers' compensation costs were **neutral factor** in terms of procurement of staffing firm employees. Unfortunately, it has become clear that a serious problem has developed with respect to the WSIB costs associated with clerical, information technology and other similar employees who obviously have a low actuarial risk of accidents.

Unfortunately, the WSIB costs associated with these low-risk clerical/information technology employees **has the potential to increase up to 4000%** under the new rate framework in certain instances. Obviously, there is no evidence that the actuarial risk associated with these employees increased at all. It is self-evident that such employees are amongst the lowest risk employees covered by the WSIB. There is simply no rational policy reason to increase WSIB costs in such a dramatic manner for inherently low risk employees who cost the system virtually nothing.

It should also be considered that staffing agencies compete against consulting firms and others for placement of employees (particularly in information technology field). It appears to ACSESS that consulting firms are generally classified in the "Rate Class L - Professional, Scientific and Technical". The 2022 class rate for "Rate Class L - Professional, Scientific and Technical" is \$0.22.<sup>5</sup> ACSESS members are competing in this space and many of them will potentially be paying a rate which is 15 times higher than the class rate for Rate Class L. This is an issue of fundamental fairness which must be addressed.

ACSESS suggests that the WSIB create a special rate class for staffing firms for the supply of clerical, technical, and other low risk workers. Across the United States, a straight-forward definition of low-risk employees is used in many jurisdictions across the country.<sup>6</sup> A similar classification could easily be adopted by the WSIB for Ontario.

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<sup>5</sup> See <https://www.wsib.ca/en/2022premiumrates>

<sup>6</sup> See <https://www.nycirb.org/classification-digest/index.php?page=general-info&class-code=8810> for how low risk employees are defined by the New York Compensation Insurance Rating Board



6. *Is there any other information the WSIB should be aware of when assessing the rate setting approach for TEAs?*

Members of ACSESS have raised concerns that there appears to be a significant disparity in what members are paying in various rate classes. Obviously, costs have largely been frozen in light of the WSIB's forward thinking effort to assist Ontario employers with the consequences of a once in a century global pandemic. ACSESS suggests that the WSIB conduct a detailed audit to determine the merits of this concern and to make the necessary actuarial adjustments to correct errors in the rate setting process.

All of which is respectfully submitted.

Yours Very Truly,

Mary McIninch, B.A, LL.B (Membre du Barreau du Québec)  
Director of Government Relations/Directrice des Affaires Publiques  
Association of Canadian Search, Employment and Staffing Services  
Association Nationale des Entreprises en Recrutement et Placement de Personnel

June 30, 2022

VIA E-MAIL

Consultation Secretariat  
Workplace Safety and Insurance Board  
200 Front St. West, 17th Floor  
Toronto, On  
M5V 3J1

Dear Consultation Secretariat,

**RE: Submission of Hays Specialist Recruitment (Canada) Inc. on the “WSIB Rate Framework Reform Consultation”**

## **Introduction**

Hays Specialist Recruitment (Canada) Inc. (“Hays Canada”) is a subsidiary of Hays plc. We have been operational in Canada since 2001 (20+ years). We are strategically located in 9 offices across the country, including several offices in Ontario namely, Toronto, Mississauga, Ottawa and our corporate headquarters in North York. We employ 250+ core staff in addition to 1,500+ workers on assignment.

Hays (inclusive of related subsidiaries such as Hays Canada) is the largest specialist recruitment company in the world. Our recruiters specialize by a particular job vertical, learning everything there is to know about their chosen area of practice. They continuously make themselves experts in the latest tools, certifications, languages, and emerging technology which affects their specialism. Recruiting specialization is directly related to each of our recruiters becoming experts which combines deep insights with specialist knowledge, enabling us to place talent across a wide spectrum of industries and sectors all over Canada.

We partner with companies in all vertical markets including but not limited to: Essential Services, Information Technology and Services, Financial Services, Banking, Insurance, Retail, Marketing and Advertising, Non-profit Management, Management consulting, Telecommunications, Automotive, Government Administration, Healthcare, Pharmaceuticals, Oil and Energy, Airlines and Aviation, Legal, Mechanical and Industrial Engineering, Gaming, Education, Real Estate and Property, and Construction.

The following submission is our response to consultations by the Workplace Safety and Insurance Board (“WSIB”) on rate setting for TEAs.

**1. What do you think the WSIB should be aware of about how the TEA industry generally operates (e.g., the typical types of supplied labour, business models, employment relationships with supplied labour, health and safety practices)?**

The WSIB needs to continue to consider that there is simply not a one size fits all solution in the TEA industry. There are many ways that TEAs, including Hays Canada, provide services to companies (“end-clients”) that need assistance with staffing or supplied labour across various industries, described above as vertical markets. These various industries require many types of supplied labour often at the same time. For example, Hays Canada offers solutions such as temporary and permanent recruitment, recruitment process outsourcing, managed service provider, retained search, and project-based recruitment. Similar solutions are offered by other comparably sized staffing organizations in Ontario. As mentioned above, Hays Canada supports a range of vertical markets with varying labour needs. Each staffing need communicated to Hays Canada by an end-client is evaluated and responded to with a proposal for the right type of solution and related contract for the type of request.

Hays Canada has three forms of relationship with sourced workers that is likely consistent across TEAs:

*1. Hays Canada maintains an employer and employee relationship.*

Under this form, Hays Canada will remit the required employer remittances such as EI, CPP, and WSIB premiums. Under this form, Hays Canada also acts in accordance with all applicable legislation including the *Occupational Health and Safety Act* and ensures the end-client is also considering their responsibility to the worker under these laws. This will include performing checks of client’s premises where the risk indicates this is necessary.

*2. Hays Canada engages the services of an independent contractor for an end-client.*

This form is typically reserved for information technology professionals that have been appropriately vetted for correct worker classification. In most cases Hays Canada will engage the business of a small business typically with 1-3 employees. This small business employs the independent contractor(s) and carries general liability and errors and omissions insurance. The small business will also be responsible for any employee remittances. This small business typically carries out work for more than one end-client or has multiple revenue streams. This is how many of the great tech startups in Canada procured their top talent or satisfied their staffing needs.

*3. Hays Canada manages the relationship with a 3<sup>rd</sup> party supplier (usually another TEA) that has an employment relationship with the worker placed with an end-client.*

In this case the 3<sup>rd</sup> party supplier will maintain the employment relationship with the worker and will be responsible for all remittances and related compliance.

## **Health and Safety Practices**

The variable level of responsibility for health and safety practices will depend on the nature of the end-client and the type of labour requested. For many TEAs in Ontario most end-clients operate very low risk business settings such as office spaces. However, if the end-client presents a riskier setting (such as construction sites, medical settings and so on), TEAs will have processes in place to ensure health and safety practices are followed and that their workers will be safe from hazards.

For example, Hays Canada has several mechanisms in place for ensuring the health and safety of their workers while on site with the end-client including safe system assessment questionnaires, site visits, advising of necessary personal protective equipment and so on. Again, there is no one size fits all solution for maintaining the health and safety of the workers while with the end-client and Hays Canada takes a tailored approach depending on the nature of the end-client and the nature of the labour required.

- 2. In cases where a TEA supplies multiple types of labour to a client, do they generally obtain one contract for all the labour supplied to the client, or do they obtain multiple contracts (one for each type of labour being supplied)?**

As mentioned above, Hays Canada offers many staffing solutions to address end-client staffing needs. Due to the many solutions Hays Canada offers, there is no singular contract that can address all the options. Although we have developed and utilize a variety of templates, the contracting process is typically open to negotiation and therefore may create many iterations of the same starting template. This is the same approach used by other TEAs of similar size in Ontario. Therefore, it would be impossible for the WSIB to evaluate a single contract and apply it as a standard for the entire TEA industry.

- 3. Are multi-year contracts between TEAs and clients common? If yes, how long do they typically last?**

Again, as there is no one size fits all approach when addressing end-client staffing needs, Hays Canada has varying lengths of contracts including multi-year agreements. It is not typical for a contract to be renegotiated during the initially agreed to term and this can sometimes lead to unfavorable conditions for the TEA due to shifting market conditions.



- 4. In cases where TEAs have multi-year contracts with clients, how do they currently account for increases or decreases in WSIB premium costs and/or other business costs that occur during the term of the contract? For example, if a TEA's costs increase one year, does the rate charged to the client also increase, or is it fixed for the entire term of the contract?**

In cases where there is a multi-year contract with an end-client, Hays Canada will typically have to absorb any increases in business costs not otherwise addressed in the initial contract. As stated above, there is usually no room to renegotiate rates payable by the end-client during the initially agreed to term. This includes any rate increases implemented by the WSIB. Due to this, Hays Canada and similar TEAs are particularly sensitive to increases in overhead costs whether implemented by the WSIB or other bodies.

- 5. Do you have any feedback about the approach of classifying TEAs in the same classes as their clients and generally aligning their rates with the rates of their clients' classes? For example, are there circumstances, or types of supplied labour, where you believe that approach is not appropriate?**

In general, Hays Canada was not previously opposed to this proposal. However, many of the positions that Hays Canada provides labour for include clerical, information technology or other similar office-based positions. Recently, it seems as though there has been a growing issue with the WSIB costs associated with clerical, information technology and other similar positions where workers have a proven low risk of workplace incidents. In fact, in ACSESS' submissions on this topic<sup>1</sup>, they have noted that the WSIB costs associated with these low-risk clerical/information technology employees has the potential to increase up to 4000% under the new rate framework in certain instances. Hays Canada takes the position that such a dramatic increase with absolutely no proven increase in associated risk is unconscionable and will result in even further decrease to the small profit margins most TEAs currently earn.

If the WSIB is open to creating a special rate class for these proven low risk positions, this approach may be more appropriate.

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<sup>1</sup> Cited in the letter Re: Submissions of the Association of Canadian Search, Employment & Staffing Services on the "WSIB Rate Framework Reform Consultation", dated June 29, 2022



**6. Is there any other information the WSIB should be aware of when assessing the rate setting approach for TEAs?**

Our closing comment relates directly to the goal of the WSIB and the nature of the service it provides, namely assisting workers who suffer a work-related injury or illness in Ontario.

The proposed model may place higher premiums on workers who are in a far less dangerous position than others. For example, an information technology worker that works from home supporting the operations of an oil and gas firm may be subject to a higher rate than a telecommunication technician in the field. This may result in the decrease of local Ontario hiring in favour of offshoring clerical or information technology work thus decreasing the reach and protection of the WSIB and eliminating Ontario jobs.

Hays Canada understands the necessity of protecting our workers and providing them the support and assistance needed to return to work post injury or illness. However, we believe that there is a more efficient and fairer way of doing so that continues to support TEAs in Ontario and can assist in continuing to provide employment to Ontarians.

Thank you for your attention to this submission.

Sincerely,

*Travis O'Rourke*

Travis O'Rourke

President, Hays Specialist Recruitment (Canada) Inc.



**INJURED WORKERS**  
COMMUNITY LEGAL CLINIC

**REPRESENTING INJURED WORKERS  
FREE OF CHARGE SINCE 1969**  
A community directed not for profit legal aid clinic

June 29, 2022

WSIB Consultation Secretariat  
200 Front Street West  
Toronto, Ontario M5V 3J1

Sent by email to: [consultation\\_secretariat@wsib.on.ca](mailto:consultation_secretariat@wsib.on.ca)

Dear Consultation Staff,

**Re: Temporary Employment Agency Rate Setting Consultation**

The Injured Workers Community Legal Clinic is a legal aid clinic with a province-wide mandate. We have specialized in the area of workers' compensation since 1969. As a legal aid clinic, our services are provided to people with little or no income for no charge. In addition to legal advice and representation, our mandate includes community development, public legal education and participation in law and policy reform.

It is our clinic's position that experience rating (basing premiums on claims and costs) is ineffective. There is no evidence to support the presumption that experience rating will lead to improved health and safety. There is a great deal of evidence that experience rating leads to claims suppression and that this is a major problem for the WSIB. We support the elimination of experience rating and a move to a flat rate system like that of Employment Insurance and OHIP.

Until then, Temporary Employment Agencies (TEA) should move directly to their applicable premium rate; there is no reason to defer the transition. The WSIB already committed significant resources to establish a new rate setting framework that more accurately reflects the TEA industry. More specifically, the WSIB planned to assign all TEAs the class rate of each class to which they supply labour as their starting rate. As a result, premium rates for TEAs would increase and become more aligned with the businesses in which their employees perform work.

We would submit that the WSIB should not backpedal on the rate setting framework in which TEA premium rates would increase and become more aligned with the businesses for which they supply labour. The intent of the new framework was to remove the financial incentives businesses have in hiring TEAs to perform more dangerous and risky work in order to control their claim costs and keep premiums low. Any modifications made based on the recommendations from the TEA industry will contradict the purpose of this process and put workers at greater risk of injury and illness.

**Temporary Employment Agencies**

While the working conditions of TEA workers is outside the scope of this consultation, it is important to consider the impacts TEAs have had in the reconfiguration of labour markets. It is common knowledge that TEA workers often perform the most dangerous work for low wages and no benefits with few protections. Furthermore, the proliferation of TEAs has increased the prevalence of precarious work and



contributed to a downward pressure on working conditions and compensation in the general workforce. Workers' compensation boards have played a role in this because there is a financial incentive for employers to avoid workers compensation costs for injuries by outsourcing dangerous work.

In relation to health and safety, studies have shown that TEA workers are at greater risk of occupational disease and accidents when compared to permanent workers.<sup>1</sup> These workers often have less training and experience performing the work and little familiarity with the workplaces in which they perform work. Based on these negative outcomes, we demand that the WSIB not reward TEAs by maintaining their artificially low premium rates in comparison to their client employers.

### **Experience Rating**

A report from 2012, which was financed by the WSIB, found that experience-rating rules have fostered the growth of the TEA industry in which employers outsource workplace injury risk.<sup>2</sup> With experience rating, client employers are looking to aggressively manage claim costs. One way to do that is to hire cheap labour through a TEA. If a TEA worker is injured while performing work for a client employer, the TEA's premiums are impacted, not the client employer's. This creates a market to outsource dangerous and heavy work to TEAs so client employers can avoid liability with the WSIB and ensure their premiums remain low.

It should also be noted that TEAs cannot manage their client employer's health and safety, which means that TEA workers are left in more vulnerable positions (lack of training). If TEA workers attempt to assert their legal rights, they will sometimes be blacklisted by the client employer, removed from the workplace and replaced by an uninjured worker. Because TEA workers are in a precarious state, they often do not even attempt to assert their rights because they are living paycheque to paycheque. This all leads to increased and prolonged workplace injuries.

### **Premium Rates**

The main point of contention and the reason why the WSIB established this consultation relates to premium rates. As stated, TEAs are concerned that their premium rates will increase under the new framework. Again, this was the whole point in establishing the new rate framework.

With that being said, some context is required when discussing premium rates. When reviewing the historical data, it is clear that average WSIB premium rates have been in freefall since the 1990s. The average premium rate per \$100 of insurable earnings was \$3.17 in 1990. By 2016, the average premium rate declined to \$2.59. And since 2016, the average premium rate has dropped to \$1.30, which marks a 50% decline in just 6 years. On top of that, the WSIB announced a refund of up to \$1.5 billion for eligible employers in 2022 as a result of the so-called surplus, which was achieved on the backs of injured workers. Ultimately, it is likely that even if premium rates for TEAs are increased, they will still be lower on average than they were in 2016.

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<sup>1</sup> MacEachen, Ellen, et al, "Workers' Compensation experience-rating rules and the danger to workers' safety in the temporary work agency sector". Policy and Practice in Health and Safety. Page 79.

<sup>2</sup> Ibid, pages 77-78.

At the end of the day, the WSIB should not have a rate setting system that financially rewards an industry that exacerbates precarious work and puts workers at greater risk of injury.

## Conclusion

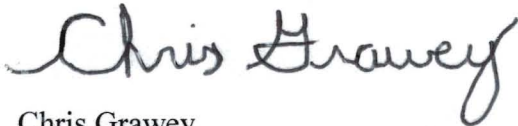
The injured worker community's longstanding position is that the WSIB's experience rating system should be abolished and replaced by a simple flat rate system, similar to that of Employment Insurance and OHIP. This would reduce aggressive claims management by employers and reduce the problem of claims suppression.

We support the 2014 amendment to the *Workplace Safety and Insurance Act (WSIA)* contained in Bill 18, which gives the government the power to make a regulation so that the liability for workplace accidents and illnesses would be held by the client employer, not the TEA. In effect, this would reduce and/or eliminate the financial incentive for client employers to outsource dangerous work to TEAs.

However, as the scope of this consultation is narrow in focus and under the purview of the WSIB, we would reiterate that the WSIB should not defer any longer the new rate setting framework in which rates for TEAs will be increased and more aligned with the rates of their clients' classes. In short, this will reduce needless workplace injuries and illnesses.

Thank you for reviewing our submission. Should you have any questions, please contact me via email ([chris.grawey@iwc.clcj.ca](mailto:chris.grawey@iwc.clcj.ca)) or by phone (416-461-2411 Ext 34).

Sincerely,  
INJURED WORKERS' COMMUNITY LEGAL CLINIC  
Per:

A handwritten signature in dark ink, reading "Chris Grawey". The signature is fluid and cursive, with the first name "Chris" and last name "Grawey" clearly legible.

Chris Grawey  
Community Legal Worker



TEA Rate Setting Consultation

NACCB Submission to the  
Workplace Safety and Insurance Board

June 30, 2022

## About the National Association of Canadian Consulting Businesses (NACCB)

The NACCB is the voice of businesses that provide professional services to organizations across Canada. NACCB member organizations provide professional services primarily by matching and placing *knowledge workers*<sup>1</sup>—highly-skilled professionals who offer their services to the End Client on a contract basis—with clients in five distinct sectors: Information Technology (IT), Engineering, Finance, Legal and Medical Services.

NACCB member organizations have approximately 38,000 knowledge workers on assignment and have 2,800 employees working internally at their businesses. Annual revenues generated through the provision of services by NACCB member organizations alone is approximately \$3.75 billion across Canada, with most generated within Ontario.

The NACCB represents the interests of its members to government and works with members to ensure that public policy makers understand the industry and the important part it plays in the country's economy.

NACCB members support 83% of the *Financial Post*'s list of the largest 500 companies in Canada by connecting them with the professional talent that possess the skill sets they need. In this way, NACCB members function as “matchmakers” by using their knowledge of both end-user requirements and Knowledge Worker skill sets to ensure that appropriate workers are apprised of existing opportunities with businesses in need of their skills.

The following submission is our response to consultations by the Workplace Safety and Insurance Board (WSIB) on rate setting for Temporary Employment Agencies (TEAs).

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<sup>1</sup> The term “knowledge worker” is attributed to noted author and management consultant, Peter Drucker, who was one of the first to foresee a shift toward a “knowledge society” and the importance of knowledge workers for the modern economy. Various commentators have noted the absence of a consensus on the meaning of “knowledge worker,” but the description proposed in these submissions highlights the key features of these workers.



**1. What do you think the WSIB should be aware of about how the TEA industry generally operates (e.g., the typical types of supplied labour, business models, employment relationships with supplied labour, health and safety practices)?**

The broader recruitment and professional services industry consists of many different *types* of organizations that provide services to companies (End Clients) that are looking for help finding talent.

These organizations range from traditional TEAs to professional services and consulting firms and include systems integrators and offshore services firms.

NACCB member organizations typically operate in two facets – a traditional TEA service model that engages with temporary employees and a professional services consulting model that involves the Knowledge Worker segment of the overall staffing industry.

***Types of Supplied Labour***

The staffing industry contains a broad spectrum of jobs including general labour, construction, and skilled trades, light industrial and professional. NACCB members are predominantly organizations that support the professional category, what we refer to as the Knowledge Worker economy.

NACCB members have over 38,000 workers in Ontario providing their expertise to clients. This is a considerable economic driver for the province, as these workers are high-skilled and highly sought-after resources.

The focus of the roles supported by our member firms are mostly professional roles such as IT, Engineering, Accounting and Finance and other Business Professionals. NACCB includes member firms that support a broader array of positions within their organizations, as many End Clients look for vendor-partners with a broader recruitment scope so they can hire a supplier that “does it all.”

***Business Model***

The prevailing business model for NACCB member firms is to provide our clients with resources on a time and materials basis, where the member firm is responsible for sourcing a candidate for the End Client to use for a given period. For hourly workers, the member firm pays the worker and bills the client, charging a fee on top of the worker’s pay rate. Within the fee, the member firm accounts for its operating costs, any legislated requirements such as Employment Insurance (EI), Canada Pension Plan (CPP) investments, and WSIB premiums. The member firm is responsible for ensuring it is charging and remitting proper tax.

The preferred vendor selection process is typically operated by a corporate procurement team at the End Client. Competing for clients is a competitive process where clients mandate service level standards and preferred pricing terms that suppliers must adhere to. In many cases, these agreements include maximum fees that suppliers can charge the client on any placement and discounts and rebates when volume grows for the supplier. Vendors are compensated only when a successful hire occurs.



The competitive process extends beyond the official TEA industry's scope. Member firms compete with consulting organizations and systems integrators – such as large consulting firms like Deloitte, KPMG and others – who also provide staff on a time and materials basis but are not deemed a TEA despite providing similar services. Consulting firms have their own rate classification, much lower than that of the average End Client. This gives consulting firms a competitive advantage as they provide services at their own assigned rate while TEAs must align with End Clients, increasing the cost for TEA engagements and reducing margins.

### ***Employment Relationships with Supplied Labour***

When an NACCB member firm provides a resource for an engagement with its client, the relationship with the resource can take on one of two forms:

1. The NACCB member firm has a direct employment relationship with the worker.
2. The NACCB member firm subcontracts work to a 3<sup>rd</sup> party supplier firm that has an employment relationship with the resource.

### ***Scenario 1 – NACCB member firm has a direct employment relationship with the worker:***

For scenario 1, where the NACCB member firm has a direct employment relationship with the worker, there are two potential approaches to the employment relationship. The first and perhaps most common is where our member firms establish a term employment relationship with the worker for the duration of the engagement with the client. There are also instances where our member firms might hire a worker as its permanent employee and rotates the worker from assignment to assignment. This is a less common approach and one that is often referred to as having a “bench employee”.

For both approaches in scenario 1, the NACCB member firm will remit the required employer remittances such as EI, CPP and WSIB premiums. In this scenario, the NACCB member can manage its own compliance in accordance with employer requirements as stipulated in the Employment Standards Act (ESA) as well as the Occupational Health and Safety Act.

### ***Scenario 2 – NACCB member firm sources labour through a third-party business relationship***

For scenario 2, where the NACCB member sources labour through a third-party business, there are also two approaches. The first approach, and one that is quite common within the Knowledge Worker segment, is where the NACCB member has a business relationship with a small, owner-operated business, typically with 1-3 employees. These small businesses are often referred to as Independent Contractors and they permeate the Knowledge Worker labour market. These businesses have the employer/employee relationship with the worker and are responsible for the employer remittances.

The alternate approach in scenario 2 is where an NACCB member has a business-to-business relationship with a large supplier organization, which could be either a staffing company itself, or specialist consulting services firm. This happens typically when the NACCB member cannot source the labour that its client needs itself and thus uses the services of another organization. It also happens where a client of the NACCB member wants to engage a worker from the larger vendor and the client does not have the



internal ability to add the vendor to its approved supplier list. In this case, an “approved” supplier of the client will engage the vendor, and by extension, its worker, for an assignment at the client.

In this case as well, the subcontract supplier will have the employment relationship with the worker and will be responsible for compliance.

In both approaches for scenario 2, the approved supplier will flow down the compliance obligations to the third-party business within a services agreement that exists between the organizations.

### ***Health and Safety Practices***

NACCB members tend to specialize by type of services delivered, and as a result, while most of our members operate primarily in low-risk office environments (IT consulting, accounting, etc.), there are some member firms that do have clients with safety sensitive worksites (i.e., engineering job sites, medical services) that require enhanced health and safety management practices

Health and safety practices start at the point of onboarding a new Client, as our member firms will evaluate the client to determine what, if any, workplace hazards may be present in their organization.

After this initial Client relationship screening, for every client services request received, our members will assess the nature of the client engagement and determine whether the engagement will involve any specific hazards that require enhanced precautions, such as worker training, protective equipment requirements and worksite safety inspections. For client worksites with significant workplace safety factors, our members will engage with the Client’s own Health & Safety organization to understand site specific PP&E and training requirements, and integrate with their worksite safety programs. This will enable our member firm to ensure the worker receives a targeted safety briefing as part of the engagement onboarding process, as well as verify that all training is completed, and PPE requirements are met.

When a client engagement involves a 3<sup>rd</sup> party supplier providing labour to our member firm, our member will work with the supplier to coordinate the delivery of any safety requirements to the applicable worker.

**2. In cases where a TEA supplies multiple types of labour to a client, do they generally obtain one contract for all the labour supplied to the client, or do they obtain multiple contracts (one for each type of labour being supplied)?**

There is no standard that all clients adhere to when a vendor partner supplies multiple types of labour. In some cases, End Clients will have one master services agreement with a supplier and different pricing and service level requirements for the different types of labour. These factors largely depend on how the client is organized internally for the various types of labour.

Clients may organize their procurement processes into different categories of workers, meaning there

could be a different recruitment support model for each type. In other instances, clients may have “hybrid teams”, a single procurement team with multiple vendor lists seeking different types of workers.

Additionally, depending on the specialty or size of the supplier, a WSIB premium increase would be hard to absorb. Large clients exert strong control over industry pricing rates and profit margins are typically thin in the industry, which makes it extremely difficult for a supplier to pass a pricing increase onto an End Client or absorb premium increases out of their own profitability.

### **3. Are multi-year contracts between TEAs and clients common? If yes, how long do they typically last?**

Multi-year contracts between clients and their suppliers are common, particularly with enterprise customers. Initial contracts will typically last between 3 to 5 years and have the option to be extended. Most client agreements also permit the Client to terminate a supplier for convenience on 30 days’ notice or less. However, each client organization is different and as such, each can have differences in their approach to contract management.

Overall, longer contract lengths can create issues for suppliers as pay rates and bill rates are often agreed upon at the beginning of the contract and are generally not open to revision throughout its duration. Unpredictable cost increases, such as WSIB premiums, put pressure on the supplier’s operating model and can, in some instances, make client engagements unprofitable.

### **4. In cases where TEAs have multi-year contracts with clients, how do they currently account for increases or decreases in WSIB premium costs and/or other business costs that occur during the term of the contract? For example, if a TEA’s costs increase one year, does the rate charged to the client also increase, or is it fixed for the entire term of the contract?**

When suppliers have an existing contract with a client, they are usually forced to absorb increases in business costs as most clients will not renegotiate pricing during the life of an agreement. Over the last ten years, such pricing changes have been very modest, and this has created a predictable pricing environment that has been manageable for the industry.

For most suppliers that provide staffing services, there are many suppliers competing for business and clients have pressured margins to be very thin. Any significant cost increase, including the proposed WSIB rate changes, can greatly impact the business model of our industry and push engagements to be unprofitable.

This issue promotes deviance with smaller suppliers who, in some instances, may neglect to pay the required premiums as it impacts their margins, or may be unaware that they are required to pay WSIB premiums.

This issue can also create unfair advantages as less sophisticated suppliers will not price-in WSIB premiums or premium risk into contracts, making these suppliers more cost competitive on those contracts but leaving workers vulnerable if accidents occur.

**5. Do you have any feedback about the approach of classifying TEAs in the same classes as their clients and generally aligning their rates with the rates of their clients' classes? For example, are there circumstances or types of supplied labour, where you believe that approach is not appropriate?**

The primary issue with the approach of classifying temporary workers in the same classes as their clients is one of pricing fairness, which can be observed in several ways:

1. Our members specialize in specific types of services, such as IT consulting, which is a low-risk activity that should not be priced at the average risk level of the client sector (which can involve a variety of low hazard and higher risk work).
2. Conversely there are TEAs that specialize in provide labour to high-risk categories (roofing, factories, etc.) that should be priced above the industry average.
3. The classification is not equally applied across all organizations that actually provide workers to clients – systems integration firms and consulting firms perform similar work as professional services TEAs but are not required to adopt the higher industry pricing for their End Clients;
4. The rates are not actually aligned to the rates paid by the clients; and
5. NACCB member firms are paying much more in premiums than necessary due to lower claims and lower-risk workers.

***Classification not equally applied***

As discussed in this submission, there are many different *types* of organizations that provide temporary talent to clients and not all these organizations are recognized as TEAs. This approach can create considerable misalignment between TEAs and other types of organizations providing talent to clients, which TEAs compete with.

For example, consider the scenario where a TEA and a consulting firm provide the same type of resource to the WSIB on assignment, the TEA would pay the WSIB industry rate of the End Client (potentially as high as 3.51% for a Public Administration class organization) whereas the consulting company would pay the Professional, Scientific and Technical rate (currently 0.22% in 2022, or 95% lower) as it is not classified as a TEA.

***Rates are not aligned with the End Clients' rates***

Because of the initial proposal to not provide TEAs with an experience rating for a number of years after the new rate framework was introduced and the fact that many of the larger End Clients are Schedule 2 Employers, the rates paid by TEAs are not aligned with the End Client's rates.

This reset of the TEA's safety rating also creates a highly adverse set of incentives, where TEAs with positive safety records are penalized with higher pricing, and TEAs with negative safety records benefit from lower pricing.

***NACCB member firms are paying too much***

As shared in this submission, NACCB member firms predominantly represent professional roles such as IT, Engineering, Accounting and Finance and other Business Professionals. One of the NACCB's member firms



**NACCB**

NATIONAL ASSOCIATION OF CANADIAN CONSULTING BUSINESSES  
2233 Argentia Road, Suite 304, Mississauga, ON L5N 2X7 • [nacccb@nacccb.ca](mailto:nacccb@nacccb.ca) | [www.nacccb.ca](http://www.nacccb.ca)

recently received information from the WSIB based on a Freedom of Information request from November 2020, which showed current gross accident costs to gross premium ratios of 11.8% to 12.8%.

What this means is that suppliers, like many of the NACCB member firms, who are specialized in the Knowledge Worker roles, are already paying excessive premiums, even before the proposed alignment with the rates of their clients' classes.

#### **6. Is there any other information the WSIB should be aware of when assessing the rate setting approach for TEAs?**

NACCB member firms typically operate on multi-year contracts without the ability to price-in risk or adjust to premium increases that occur midway through a contract. Industry dynamics exacerbate this issue, as the high degree of competition mean profit margins are thin and End Clients can assign responsibility for different risk factors to our members as opposed to managing it themselves.

Rate differences can also create considerable misalignment between suppliers depending on the sector and type of work their clients engage in. Public sector clients do not pay WSIB premiums, limiting the risk and cost for suppliers who earn contracts in this space. The proposed premiums across the different classes of clients range widely, which is hard to reconcile for contract workers performing the same job function at different clients, and unpredictable premium increases can mean the difference between a profitable and unprofitable contract. This misalignment incentivizes TEAs to target clients with lower class rates.

The effective profit margins of TEAs are reflective of a mature, competitive industry with a wide range of market participants from small single-shingle providers to large, sophisticated players. Accordingly, a 2017 Statistics Canada Survey of Employment Services shows margins at 3.6% and 4.3% in 2016 and 2017, respectively.<sup>2</sup>

Even under higher margins, increased WSIB rates can greatly impact the profitability of NACCB member firms' industry. As an example, for the Ontario Workforce Recovery Advisory Committee, the NACCB put together a Pro Forma Income Statement ("Table A") showing this impact. Successful resolution of this issue is a top priority of our industry as it will either push already thin margins even lower or promote deviance among TEAs that either are unaware of their legal requirements or actively decide not to comply. The mandate of the NACCB is to not only advocate on behalf of our members, but also to ensure that our membership is aware of government requirements on the industry.

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<sup>2</sup> <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=2110006301>



Table A

Pro Forma Income Statement - \$50M Revenue @ 15% Gross Margin							
	Current WSIB Rates			Project WSIB Rates using D2 3600% increase		Impact of new WSIB rates	
<b>Contract Revenue</b>	<b>\$50,000,000</b>			<b>\$50,000,000</b>			
Direct Costs before WSIB costs	\$42,454,167			\$42,454,167			
WSIB Costs	\$46,521			\$1,721,272			
<b>Gross Margin</b>	<b>\$7,499,312</b>	<b>15.00%</b>		<b>\$5,824,561</b>	<b>11.65%</b>		
<b>Total General and Administrative Expenses</b>	<b>\$5,000,000</b>	<b>10.00%</b>		<b>\$5,000,000</b>	<b>10.00%</b>		
<b>EBITDA</b>	<b>\$2,499,312</b>	<b>5.00%</b>		<b>\$824,561</b>	<b>1.65%</b>	<b>(\$1,674,751)</b>	<b>-3.35%</b>

Given the importance of this issue to our membership that will always seek to be compliant with all government regulatory and legislative requirements, the NACCB have developed several potential solutions to address the issues identified above.

1. A rate code for the work performed by Knowledge Workers, separate from other codes in other industries. The Knowledge Worker economy represents a growing segment in the economy. The knowledge economy is large enough to justify a separate rate code and a set risk profile for the work performed.

Furthermore, this change would be consistent with the changes that happened under the construction industry that separate out industrial and residential construction activities given the different risk levels.

Finally, this change would be consistent with our largest trading partner and competitor in the U.S. that has a standard exception in the compensation model for workers engaged in similar job functions across a variety of employers: Classification 8810 - Clerical Office Employees.

2. We also recommend that the WSIB safeguard the future framework by implementing a system where potential annual premium increases are transparent, measured, and manageable, as firms need a mechanism to plan for long-term contract awards with predictable rate increases between 3-5% annually.
3. A streamlined approach to the WSIB's independent operator ruling process. This change would be consistent with the changes to the Employment Standards Act recently made under Bill 88. Many contract services engagements develop very quickly, in many cases less than 5 days from identification to commencement of work, and the current ruling process has significant red tape involved and operates too slowly to provide a timely response in this context.
4. An alternative model would be to create a new insurance program that permits small businesses or independent contractors to purchase individual insurance policies from the WSIB through a secure credit card transaction on the WSIB website. This would ensure all contract workers a low red tape option to secure WSIB coverage and enable small firms to easily secure coverage that can be applied across multiple consulting engagements with different clients. Suppliers would



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assume the responsibility of ensuring the contractors were insured before assigning to End Clients and ensure the worker had either appropriate coverage for the length of the contract or renewed their insurance to ensure no coverage gaps occur while on assignment.





**ONTARIO  
FEDERATION OF  
LABOUR**

**PATTY COATES**, President

**AHMAD GAIED**, Secretary-Treasurer

**JANICE FOLK-DAWSON**, Executive Vice-President

June 28, 2022

To: [consultation\\_secretariat@wsib.on.ca](mailto:consultation_secretariat@wsib.on.ca)

**Re: Temporary Employment Agency (TEA) rate setting consultation**

The Ontario Federation of Labour (OFL) will not be entering a detailed submission as part of the Temporary Employment Agency (TEA) rate setting consultation process as we believe it is unnecessary and inflammatory. Any change to the already consulted upon regulation could be harmful to injured workers.

Regulation 175/98 is clear: Temporary Employment Agencies are to be classified according to the industry that their workers service. In other words, that the WSIB charge TEAs the same premium rates as their clients. The intended purpose of that introduction was to remove the financial incentive of businesses hiring Temporary Employment Agencies to perform more dangerous work because it avoided potentially higher claims cost and kept premiums lower.

Going against the original plan envisioned by the regulation defeats the entire purpose of its introduction, and most concernedly, would disincentivize providing a safer work environment for temporary agency workers, which has led to many traumatic injuries and fatalities. Fiera Foods alone has killed five workers, four of whom are confirmed to have been from temporary employment agencies, and still fails to make safety a priority because their profit line always tragically comes first.

Even if the TEA premium rates were to increase significantly, rates would still likely be lower than they were five years previous, given the rate reductions and rebates that have been doled out to employers in recent years. The average premium rate per \$100 of insurable earnings has decreased about 50 per cent since 2016. If anything, temporary employment agencies should be paying more in premiums to avoid using them in the first place as they are the site of so many injuries and deaths and other precarious working conditions.

If the WSIB should consult on anything, it should be to create a much simpler flat rate system with perhaps two rates, and abolish its flawed system of charging premium rates based on claims experience – which everyone knows is not an accurate measure of health and safety and in fact, only incentivizes aggressive claims management and claims suppression.

Given the above, we sadly believe this consultation is part of an overall delay to implement the legislative changes that took effect on January 1, 2017, only serving to highlight the injustices of our compensation system via the WSIB. When workers and their allies and representatives raise alarm about flaws in the system that disadvantage workers from their right to compensation—whether it be adjudication for injuries, illnesses or fatalities—they are ignored. And yet, when employers such as temporary employment agencies seek lower premiums or costs, a consultation process swiftly occurs.

The consultation process for the concerned regulation already took place, and the result made sense. Repeating a consultation process to rig it in favour of decreasing costs for dangerous employers such as temporary employment agencies not only makes zero sense, but is inflammatory and dangerous for injured and ill workers. We insist that the WSIB adhere to the original plan to charge TEAs the same rates as their clients.

In solidarity,

**PATTY COATES**  
President

PC/NL/RH/ma/Cope343

C: OFL Officers  
R. Halpin, Executive Director  
N. Luckhardt, Director of Health, Safety and Environment

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15 Gervais Drive, Suite 202, Toronto, Ontario M3C 1Y8 T: 416-441-2731 | F: 416-441-1893 | OFL.CA

Janet Paterson  
President



Willy Noiles  
Executive Vice President

Eugene Lefrancois  
Treasurer

June 29, 2022

WSIB Consultation Secretariat  
200 Front Street West  
Toronto, Ontario M5V 3J1

Sent by email to: [consultation\\_secretariat@wsib.on.ca](mailto:consultation_secretariat@wsib.on.ca)

Dear Consultation Staff,

**Re: Temporary Employment Agency Rate Setting Consultation**

The Ontario Network of Injured Workers' Groups (ONIWG) is the voice for injured workers across the province of Ontario.

It is our position that this consultation is unnecessary and that the WSIB should implement the new rate setting framework for Temporary Employment Agencies (TEA) that was to be introduced in 2020.

The new rate setting framework for TEAs was supposed to generally align TEA rates with the rates of their clients' classes. This would cause rates to increase for some TEAs.

The intent of the new framework was to remove the financial incentive businesses have in contracting out dangerous work to TEAs in order to avoid higher claim costs. Ultimately, workplaces would be made safer by aligning the rates.

The WSIB delayed the implementation of these changes because of complaints from the business community. This sends a message to injured workers that any perceived decision not in businesses' favour will be met with delays and possible reversals by the WSIB. At the same time, injured workers have requested numerous policy changes for many years that the WSIB has ignored.

ONIWG's longstanding position is that experience rating should be abolished and replaced by a simpler flat rate system. However, as this consultation is focused strictly on TEAs, we would reiterate that the WSIB should not further delay the changes that were meant to be introduced in 2020.

Thank you for reviewing our submission. If you have any questions, please email [oniwgexec@gmail.com](mailto:oniwgexec@gmail.com).

Sincerely,

Janet Paterson, President





# WSIB Temporary Employment Agency Rate Setting Consultation Submission

Sylvia Boyce, USW D6 Health, Safety and Environment Coordinator &  
Andy LaDouceur USW Local 2251 WSIB Committee

**Introductory remarks:**

The United Steelworkers (USW) is the largest private sector union in both Canada and North America, representing approximately 1.2 million active and retired workers. USW District 6 is the largest of United Steelworkers' 13 districts with over 74, 000 members and approximately 50, 000 retirees located in Ontario, New Brunswick, Newfoundland and Labrador, Nova Scotia, and Prince Edward Island. Our union represents workers in every sector the Canadian economy.

We appreciate the opportunity to participate in this longstanding tradition of WSIB stakeholder consultations. The USW has a proud history of providing WSIB representation for our members and that history includes fighting for improvements in legislation as well as policy. In this particular consultation we are taking the position that the WSIB should be implementing the changes to Ontario Regulation 174/98 made by Ontario Regulation 470/16.

**Background:**

A consultation regarding rate setting for temporary employment agencies was announced by the WSIB on May6, 2022 with a due date for comments of June 30, 2022. It was noted by the WSIB there was a new rate setting model in 2020 and that the driving force behind this consultation was concerns raised by Temporary Employment Agencies (TEA). Consultations were held regarding the new rate setting model which provided TEAs the opportunity to present their concerns at that time. Ontario Regulation 470/16 was written December 1, 2016, and the section addressing TEA rate setting was set to commence January 1, 2019<sup>1</sup>.

**Comments:**

There are six questions in the consultation paper, and in any ordinary consultation we would likely address each question. However, given the previous rate framework consultation and the changes already made to O. Reg. 175/98, this is no ordinary consultation. It is on that basis that we assert this consultation process is not only unnecessary but also unlawful. Therefore, we will address the sixth question about information that the WSIB should be aware of regarding the rate setting approach to TEAs.

It is acknowledged in the consultation paper that,

<sup>1</sup> See Commencement section of O. Reg. 470/16 <https://www.ontario.ca/laws/regulation/r16470>

“TEAs’ rates were significantly less than the rates of their clients and in some cases, creating an incentive for some clients to use TEA workers to reduce their premium costs.”

The consultation document also stipulates that the rate setting approach introduced in 2020 was designed to rectify that very issue. No reason has been provided for not having this rate framework implemented other than TEAs don’t like it, which quite frankly isn’t sufficient to ignore the regulations as there is no reason that justify such an action.

At least four, if not all five, workers who died as a result of the unsafe working conditions at Fiera Foods were workers from TEAs<sup>2</sup>. It isn’t clear whether those four or five workers were from different TEAs, but it is clear that safety is not only beyond the control of these agencies, but it is also not a concern for them because they continue to supply workers to employers with published track records regarding injuries and fatalities. Instead of asking for help protecting their workers, TEAs are asking the WSIB for help protecting their bottom line. It is reprehensible that the WSIB is responding in the way that they are by providing a consultation that at its core ignores the regulation.

There is nothing in the WSIA that grants the WSIB authority to ignore the Act, which includes the regulations, and by doing so it could be seen as an abuse of authority. Although we might not agree with the regulation writing authority that s. 183 of the WSIA grants the WSIB, because an administrative justice agency shouldn’t be making its own rules, we recognize that it is there and assert that nothing in the Act gives the WSIB authority to ignore the legislation. In fact, s. 161 of the WSIA states that the WSIB is required to administer the insurance plan and perform the duties assigned under the WSIA or other Acts.

The WSIB has acknowledged their legislative responsibilities in Policies 11-01-02 & 11-01-03 with respect to decision-making in claims, but there is nothing in the WSIA restricting the WSIB’s legislative obligations to decisions in claims for benefits. Statements in those two policies seem to indicate that the WSIB is aware that they have obligations beyond benefit entitlement decisions under the WSIA. For example, Policy 11-01-02 stipulates that,

“The WSIB’s decisions and practices must be consistent with the provisions of the Act and the rules of natural justice.”<sup>3</sup>

Another example is found in Policy 11-01-03 where it states that,

<sup>2</sup> September 26, 2019, Toronto Star article *Another worker dies at Fiera Foods. The Labour Ministry is investigating* <https://www.thestar.com/news/canada/2019/09/25/labour-ministry-investigating-fatal-industrial-accident-at-fiera-foods.html>

<sup>3</sup> See the third sentence under the heading ‘Principles’ in Policy 11-01-02 *Decision-Making* <https://www.wsib.ca/en/operational-policy-manual/decision-making-0>

“The WSIB is responsible for administering and implementing the Act.”<sup>4</sup>

Both of those statements are of a general nature recognizing that the WSIB’s obligation to follow the direction provided in legislation goes beyond benefit entitlement decisions. Nothing in s. 161 suggests that the duty to administer the insurance plan restricts the WSIB’s legislative obligations to benefit entitlement decisions, and sections 118 & 159 of the WSIA make it clear that the Board’s authority as well as duty extends to setting employer premium rates.

O. Reg. 470/16 was written by the Board pursuant to the authority granted to it by the WSIA and it was the Board who chose the date for it to come into force, which was three years after it was written. Now that it is in force, there is no legislative authority for the WSIB to ignore it as they have apparently done since January 1, 2019, or to opt for a consultation such as this. The regulation clearly directs that the rates for TEAs be set according to their clients’ classification (or the classification closest to that if the client is a Schedule 2 employer or not covered by the WSIA) and now it is the long overdue duty of the Board to implement those changes. Essentially, the WSIB has the authority to make regulatory changes, but they do not have any authority to ignore the regulations, even if they wrote them.

Previously, in the WSIB’s consultation regarding occupational disease policy framework, the Board stated that regulation has the force of law and they also stated that the WSIB relies on its regulation making authority<sup>5</sup>. It seems rather disingenuous for the WSIB to declare that they rely on their regulation making authority in one consultation and then ignore a regulation that they wrote to hold this consultation. The amendments to O. Reg. 175/98 are the law and the WSIB is the agency that should be implementing and enforcing the regulation.

In the TEA rate setting consultation paper, the WSIB takes the position that the new rate model only allows for gradual increases each year, but that doesn’t authorize departing from the legislation or holding this consultation to circumvent the regulation. Policy must be consistent with the legislation and considering that the new policies were written after the regulatory changes were made then there is no excuse for this departure from s. 2 of O. Reg. 175/98. There is nothing that can justify the WSIB’s actions with respect to violating s. 2 of O. Reg. 175/98 and failing in their responsibilities prescribed by s. 161 of the WSIA.

Injured workers, representatives and allies have long been complaining about the injustices suffered by injured workers due to the practice of deeming (referenced in the WSIA as determining post-injury earnings) but the WSIB upholds that part of the legislation consistently. There are many other instances of injustices suffered by injured workers that

<sup>4</sup> See the first sentence under the heading ‘Role of the Act’ in Policy 11-01-03 *Merits and Justice*  
<https://www.wsib.ca/en/operational-policy-manual/merits-and-justice>

<sup>5</sup> See the first sentences in the first & fourth paragraphs in section 2.2 *Regulation: Presumptions and Schedules*  
<https://www.wsib.ca/en/draft-occupational-disease-policy-framework-consultation-purposes>

have also been ignored by the WSIB. By failing to implement s. 2 of O. Reg. 175/98 and holding this consultation the WSIB has shown preferential treatment for a group of employers. The WSIB may take the position that it wasn't their intent to provide such preferential treatment to employers, but the effect is that they have demonstrated an unacceptable bias.

It is our position that the WSIB must follow the Act including the regulations and stop this unnecessary consultation process which is stated to be Phase 1. There should be no Phase 2 and no further reprieve from the prescribed rate setting method for TEAs. WSIB is the very agency charged with administering the WSIA and they shouldn't need a consultation to remind them of their legislative obligations.

Respectfully submitted on behalf of USW District 6 on June 30, 2022, by

*Sylvia Boyce and Andy LaDouceur*

**From:** [Jonathan Ward](#)  
**To:** [Consultation Secretariat](#)  
**Subject:** Temporary Employment Agency rate setting consultation - REPLY to Questions for Stakeholders  
**Date:** Tuesday, May 31, 2022 1:57:04 PM

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**Do you have any feedback about the approach of classifying TEAs in the same classes as their clients and generally aligning their rates with the rates of their clients' classes? For example, are there circumstances, or types of supplied labour, where you believe that approach is not appropriate? Any TEA that is supplying Information Technology (IT) Workers should not be charged a WSIB rate based on their end Client's Industry. For example, if I provide a Computer Programmer to a company in the Residential or Commercial Development/Construction Sector, it makes no sense that an IT Worker pay as much WSIB as a Construction Worker or that the IT Worker WSIB rates are inflated because the end client is in Construction.**

IT Workers are inside working on a laptop in an environment with VERY low risk of injuries or other expensive claims. Furthermore, it doesn't make sense that 2 IT Workers could be working in the same Business Building on the same floor, doing the same job, but since one of them is working for a Construction Company their WSIB charges are higher than the one working on the same floor in the same building doing the same thing for a R&D company or a Law Firm, where the WSIB charges are lower.

In general, IT Workers' WSIB charges should remain to be minimal around the \$0.10 per \$100 mark. Anything more than this is ridiculous.

Thanks,

Jonathan

Jonathan Ward | President  
[JWard@WardTechTalent.com](mailto:JWard@WardTechTalent.com)  
Direct: 647-258-4753  
Cell: 416-624-1117  
Toronto ON





## **WORKERS' HEALTH AND SAFETY LEGAL CLINIC**

180 Dundas Street West, Suite 2000, Box 4, Toronto, Ontario M5G 1Z8

Tel: 416-971-8832 • Toll free: 1-877-832-6090 • Fax: 416-971-8834

[www.workers-safety.ca](http://www.workers-safety.ca)

30 June 2022

**Via Electronic Mail**

Temporary Employment Agency Rate Setting Consultation  
Workplace Safety and Insurance Board  
200 Front Street West  
Toronto Ontario  
M5V 3J1

**RE: Temporary Employment Agency Rate Setting Consultation**

To Whom It May Concern:

I am writing to provide submissions with respect to the above referenced consultation. I submit that the approach taken by framing the questions solely around financial impact amounts to a wilful blindness as to the use of temporary employment agencies ("TEAs"). A better approach would be on fulfilling the purpose of the *Workplace Safety and Insurance Act, 1997*<sup>1</sup> ("the Act") to "promote health and safety in workplaces"<sup>2</sup> in the context of TEAs. Doing so would ensure, employers actually responsible for accidents are held responsible, TEAs are not used to limit financial responsibility, and the Workplace Safety and Insurance Board ("the Board" or "the WSIB") correctly captures TEAs as the classification/rate setting system which is inadequate when applied to the supply of labour in the context of claims responsibility.

***Who We Are***

By way of background, the Workers' Health and Safety Legal Clinic ("the Clinic") is a community legal clinic funded by Legal Aid Ontario. Our mandate is to provide legal advice and representation to non-unionized low wage workers in Ontario who face health and safety problems at work. We have appeared before the Ontario Labour Relations Board on behalf of workers who were fired for raising occupational health and safety concerns. We have also assisted federally regulated workers with unlawful reprisal complaints before the Canada Industrial Relations Board.

The Clinic represents workers who are injured on the job with respect to their workers compensation claims before the Ontario Workplace Safety and Insurance Board ("the WSIB" or "the Board") and the Ontario Workplace Safety and Insurance Appeals Tribunal, workers who have reprisal claims under the Ontario *Employment Standards Act, 2000*, workers who have been

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<sup>1</sup> [S.O. 1997](#), c. 16, Sched. A, as amended.

<sup>2</sup> The Act, [s. 1](#).



discriminated against because of the workers' compensation claim, and workers who have been wrongfully dismissed.

### ***Response to Question 1 – The WSIB Approach to TEAs Is Inadequate***

It is well known that TEAs are used for risk avoidance by client employers. This was documented over a decade ago in a study by the Institute for Work and Health (“the Institute”) found that TEA workers are at a higher risk of workplace accidents.<sup>3</sup> The reason was unsurprising: experience rating was the cause of the higher accident rate. The Institute found that TEAs served a specific purpose, risk avoidance for client employers.<sup>4</sup>

Client employers divert dangerous or more onerous work on temporary employees. Given that employers naturally want to reduce their claim costs, there is no incentive for client employers to address health and safety issues because the TEAs are the employers for the purposes of the Board.<sup>5</sup> The decision to increase premium rates for TEAs based on their clients does not equate to increased support for prevention. While the Ministry of Labour, for occupational health and safety issues, can recognise the responsibility of two employers and charge them accordingly, the WSIB allows the use of TEAs to shield client employers.

One example, cited in the study, came from a TEA, “We were providing industrial labour... to a client. The client was receiving an award [workers' compensation] 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.”<sup>6</sup> Protecting the health and safety of agency workers can easily be done by making the client employer – the place where the accidents occur – the one responsible for all accident-related consequences and health and safety consequences.

The *Toronto Star* has reported on the use of TEAs and the need to do better to protect workers. Articles covered the significant challenges temp agencies pose<sup>7</sup>; how temp agencies are more likely to break the law<sup>8</sup>; and the failure to implement laws to protect workers.<sup>9</sup>

The first question in the consultation reads, “What do you think the WSIB should be aware of about how the TEA industry generally operates?” With respect, the WSIB already has the answer. TEAs operate to reduce the rates of their client employers. The WSIB already knows this having failed to hold a client employer responsible under the WSIB Fatal Claims Premium Adjustment Policy.<sup>10</sup> While admirable in the attempt, the client employer won their appeal in

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<sup>3</sup> E. MacEachen et al, “[Workers' compensation experience rating rules and the danger to workers' safety in the temporary work agency sector](#)” (2012) 10:1 *Policy and Practice in Health and Safety*, 79.

<sup>4</sup> *Ibid*, 82.

<sup>5</sup> *Ibid*, 82.

<sup>6</sup> *Ibid*, 83.

<sup>7</sup> Sara Mojtehdzadeh and Brendan Kennedy, “Temp agencies pose ‘significant challenges’ to compensation board, internal audit shows” *The Toronto Star* (08 April 2018) [online](#)

<sup>8</sup> Sara Mojtehdzadeh, “Temp agencies more likely to break law — but audits decline by 80 per cent, WSIB documents show” *The Toronto Star* (06 March 2019) [online](#)

<sup>9</sup> Sara Mojtehdzadeh and Brendan Kennedy, “Ford government fails to implement law to protect temp workers that was left dangling by Liberals” *The Toronto Star* (06 June 2019) [online](#)

<sup>10</sup> [WSIB Policy Document No. 14-02-17](#)



WSIAT Decision No. 1386/20<sup>11</sup> reversing the WSIB's attempt to apply the Fatal Claim Adjustment Policy to the client employer. The WSIB knew that the accident was the responsibility of the client employer. The WSIB knew the TEA was a liability shield for the client employer.

Client employers shouldn't just be responsible for serious accidents and fatalities. Client employers should be responsible for all accidents on their premises. The WSIB already knows how and why the TEA industry operates.

***Response to Questions 2 through 5 – Deny Profits for Injuring Workers***

As should be clear from the above, TEAs are used to deflect costs. The WSIB should set premium rates in an easy and effective manner to ensure that TEAs are not used for cost avoidance.

The WSIB should not be in the business of ensuring sweetheart deals for TEAs in order to allow client employers to rely on them to lower their costs and responsibility to review health and safety concerns. Costs rise and fall as the market demands be if for labour or supplies. Such factors are not considered elsewhere in the compensation system and should not be factored here.

The process is simple and should not require this level of consultation. Premium rates are available from the WSIB. The TEA asks the client employer the nature of their business. The TEA reports premiums on the basis of the classification of the client employer. In situations where there are multiple premium rates with TEAs supplying labour under multiple premium rates, the TEA pays based on the highest premium rate. This avoids any need for parcelling workers or an overly exacting study of accounts; the TEA simply covers all workers at the highest rate.

This approach curbs the use of TEAs to farm out dangerous work. This approach also limits the amount of red tape by keeping reporting to one premium rate.

***Question 6 – Take Responsibility***

What to do about TEAs is not a new question. As noted above, it has been over a decade since the Institute paper was released.

The cost avoidance use of TEAs by client employers must end. Given the WSIB's willingness to engineer creative use of the Fatal Claims Premium Adjustment Policy, the WSIB should consider simpler options to reduce reliance on TEAs.

TEAs are not responsible for accidents where labour is supplied to a client employer. To protect their business, TEAs would never take action that would harm the business model in which they thrive.

The WSIB should therefore take the step of amending the Transfer of Costs policy to promote health and safety in the workplace. The policy should be amended to automatically transfer claim costs and return to work responsibilities to the client employer when the accident happens

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<sup>11</sup> [2021 ONWSIAT 1387 \(CanLII\)](#)

on their premises. This approach would restore accident responsibility to the appropriate employer.

A client employer would not want to be responsible for the obligations of the agency. The vigilance of the client employer will promote health and safety. If the client employer is responsible for health and safety and workers compensation claims, the client employer will by extension improve the workplace conditions for agency employees. Making agency use less desirable has the consequence of improving workers' rights.

Thank you for your attention to this matter. I look forward to participating in Phase Two of this consultation process.

Yours truly,

*John Bartolomeo*

John Bartolomeo  
Lawyer/Co-Director

**From:** [Carol Moore](#)  
**To:** [Consultation Secretariat](#)  
**Subject:** TEA'S Consultation  
**Date:** Tuesday, June 14, 2022 10:53:08 AM

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Dear Consultation Secretariat,

I am an injured worker, and I am very disappointed that the WSIB is looking to back track on its original plan to charge TEAs the same premium rates as their clients. The entire reason why that was proposed (and deemed necessary) was to remove the cost benefit of businesses hiring TEAs to do more dangerous work because it avoided claims costs and kept premiums low. Doing anything short of charging TEAs the same premium rates as their clients does not remove the incentive to contract out dangerous work and defeats the whole purpose of the proposal.

In other words, increasing the rates of TEAs in order to match those of their clients is the very essence of the solution, and so to suggest a new plan is needed because TEAs are concerned about an increase in their costs is nonsense. Increasing the costs of TEAs was the very purpose of the proposal. Even if the premium rates of TEAs were to increase significantly, rates would still probably be lower than they were 5 years ago given all the rate reductions and rebates that have been given to employers in recent years. Specifically, the average premium rate per \$100 of insurance earnings has decreased about 50% since 2016. In other words, this consultation is not only unnecessary but also ridiculous. TEAs should be paying more in order to avoid incentivizing their use, and TEAs complaining about paying more should not change this much needed correction to the system.

This would of course be unnecessary if the WSIB abolished its flawed system of charging premium rates based on claims experience, which is not in fact an accurate measure of health & safety and only incentivizes aggressive claims management and claims suppression. A better alternative would be to create a much simpler flat rate system with perhaps two rates.

Carol Moore

**From:** [Eugene Lefrancois](#)  
**To:** [Consultation Secretariat](#)  
**Subject:** Temp Agencies  
**Date:** Wednesday, June 29, 2022 3:27:30 PM

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## Greetings and Salutations

I was injured June 5 1985, and I have seen a few things. WCB/WSIB has changed from worker friendly to worker enemy. I have also seen the Labour Ministry turn into an employer cash cow on the backs of injured workers. When will this change be made? Workers are dying in workplaces across Ontario and it seems with the blessing of this government...

I am writing this letter to you to get voice my concerns on temp agencies. I would have no objections with agencies if only they were no leeches on workers of Ontario. The word leeches is about right for the only reason they are in business is to exploit the worker. From just a few temp agencies to a lot says that there are a lot of workers to exploit. The conservative agenda is just that, an agenda. The agenda started when greed of corporations became legal. This left no protections for labour. Claim suppression, limited Health and Safety, less pay than all other workers, and for what.....GREED that's what. Why do corporations use temp agencies when most corporations have Human Resources..why did Fiera foods use a temp agency. Why do the steel mills, nuclear plants use temp agencies. Could it be that these corporations knowingly use workers because of the high risk of injuries and diseases? Did any corporations of employees who had injuries on their worksite get rebates. Regardless of how the worker was hired, did these corporations get rebates?? Get rid of temp agencies as they are only leeches on society. Corporation have Human Resources, if they want to be in business then they have to play by the moral and ethical rules that are set out by society.

In closing, if you value life you will get rid of temp agencies...!  
If you love GREED then you will continue to be open for business not caring about the people who live in Ontario..

Eugene Lefrancois  
Treasure.  
Ontario Network Injury Worker Groups

President  
Thunder Bay & District Injured Workers Support Group.  
(807)767-7827

**From:** [G](#)  
**To:** [Consultation Secretariat](#)  
**Subject:** Temporary Employment Agency Premium Rates  
**Date:** Tuesday, June 14, 2022 12:11:12 PM

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To whom it may concern,

I am an injured worker and I am disgusted that the WSIB is looking to back track on its original plan to charge Temporary Employment Agency's (TEAs) the same premium rates as their clients. The entire reason why that was proposed (and deemed necessary) was to remove the cost benefit of businesses hiring TEAs to do more dangerous work because it avoided claims costs, kept premiums low and contributes to claim suppression. Doing anything short of charging TEAs the same premium rates as their clients does not remove the incentive to contract out dangerous work and defeats the whole purpose of the proposal.

In other words, increasing the rates of TEAs in order to match those of their clients is the very essence of the solution, and so to suggest a new plan is needed because TEAs are concerned about an increase in their costs is nonsense. Increasing the costs of TEAs was the very purpose of the proposal. Even if the premium rates of TEAs were to increase significantly, rates would be lower than they were 5 years ago given all the rate reductions and rebates that have been given to employers in recent years. Specifically, the average premium rate per \$100 of insurance earnings has decreased about 50% since 2016. In other words, this consultation is not only unnecessary but also ridiculous. TEAs should be paying more in order to avoid incentivizing their use, and TEAs complaining about paying more should not change this much needed correction to the system. The WSIB needs to stop pandering to employers financial interests.

This would of course be unnecessary if the WSIB abolished its flawed system of charging premium rates based on claims experience, which is not in fact an accurate measure of health & safety and only incentivizes aggressive claims management and claims suppression. A better alternative would be to create a much simpler flat rate system.

"TEA Consultation".

[consultation\\_secretariat@wsib.on.ca](mailto:consultation_secretariat@wsib.on.ca)

I am an injured worker and I am very disappointed that the WSIB is looking to back track on its original plan to charge TEAs the same premium rates as their clients. The entire reason why that was proposed (and deemed necessary) was to remove the cost benefit of businesses hiring TEAs to do more dangerous work because it avoided claims costs and kept premiums low. Doing anything short of charging TEAs the same premium rates as their clients does not remove the incentive to contract out dangerous work and defeats the whole purpose of the proposal.

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Karl Crevar

**From:** [Ken Grysiuk](#)  
**To:** [Consultation Secretariat](#)  
**Subject:** TEA Consultation  
**Date:** Tuesday, June 14, 2022 8:43:54 PM

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Hello, I am from Manitoba and an injured worker. I am very disappointed that the WSIB is looking to back track on its original plan to charge TEAs the same premium rates as their clients. The entire reason why that was proposed (and deemed necessary) was to remove the cost benefit of businesses hiring TEAs to do more dangerous work because it avoided claims costs and kept premiums low. Doing anything short of charging TEAs the same premium rates as their clients does not remove the incentive to contract out dangerous work and defeats the whole purpose of the proposal.

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This would of course be unnecessary if the WSIB abolished its flawed system of charging premium rates based on claims experience, which is not in fact an accurate measure of health & safety and only incentivizes aggressive claims management and claims suppression. A better alternative would be to create a much simpler flat rate system with perhaps two rates.

These ongoing choices of the WSIB and WCB eventually effects everyone in our country.

The ethics behind the decisions to allow these temp agencies to undermine safety is borderline criminal. I am aware of a sub contractor who was hired by Lafarge Aggregate a few years back. The job that he was asked to do was dangerous but he was the type of worker that would never turn down an assignment because he needed the money. He was killed at a power station in northern Manitoba and there was no real investigation and there was no compensation. His family got nothing and he was two weeks away from retirement... His retirement was his death because his role wasn't supported because he was a sub contractor... he should have been insured...

Ken Grysiuk  
An Injured Worker from Manitoba

**From:** [Ken Grysiuk](#)  
**To:** [Consultation Secretariat](#)  
**Subject:** Re: TEA Consultation  
**Date:** Wednesday, June 15, 2022 2:05:09 PM

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Hello and thanks for the confirmation.

I do want to share with you that my intention is not to come across as a person wanting to create a negative impact on a system that has provided assistance for many individuals.

I am aware that there are many people that have had an injury at work and have been provided adequate assistance and follow up with financial, physical and mental support.

The observation that is shared by many people are workplace accidents that present as an uncomplicated are handled uniformly with little to no feedback. On the other hand, individuals that have complications with their workplace accidents and require significantly more support with the recovering process are not receiving adequate assistance. More so, they are not treated as seriously injured people.

The WSIB and WCB case managers routinely push injured worker's back to work claiming the return to work plan is justified and beneficial, denying longer term recovery plans. This is usually based on a 10 week routine recovery time limit and any medical support to remain off work are not considered. The timeline chart that many case managers follow are labeled with how much time a person requires to recover.

As a result further physical and psychological injuries impact the recovering worker. Often leading to further complications with the injuries. And this impact goes beyond the injured worker and negatively impacts the families of the injured workers. Case managers will turn the page on these worker's often leaving the injured worker in a terrible state. Many have lost all financial stability and many have reported suicidal ideation.

These circumstances are real and many injured worker's lives are turned upside down as a result of this treatment. The issues occur because the WCB & WSIB claim that they actually care about injured worker's and their families. This has not shown to be true.

I personally have many reasons to be upset with the WCB but mostly for the treatment I've received from them. As I will say again not by all case workers but the majority are under a lot of pressure to case manage as per the injury recovery chart.

As a result of this poor treatment my impairment has increased and it was simply an act of abuse of authority and refusal to provide support.

Ken Grysiuk



**From:** [Mike Guenette](#)  
**To:** [Consultation Secretariat](#)  
**Subject:** TEA Consultation  
**Date:** Tuesday, June 14, 2022 12:01:37 PM

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I am an injured worker, and I am very disappointed that the WSIB is looking to back track on its original plan to charge TEAs the same premium rates as their clients. The entire reason why that was proposed (and deemed necessary) was to remove the cost benefit of businesses hiring TEAs to do more dangerous work because it avoided claims costs and kept premiums low. Doing anything short of charging TEAs the same premium rates as their clients does not remove the incentive to contract out dangerous work and defeats the whole purpose of the proposal. In other words, increasing the rates of TEAs in order to match those of their clients is the very essence of the solution, and so to suggest a new plan is needed because TEAs are concerned about an increase in their costs is nonsense. Increasing the costs of TEAs was the very purpose of the proposal. Even if the premium rates of TEAs were to increase significantly, rates would still probably be lower than they were 5 years ago given all the rate reductions and rebates that have been given to employers in recent years. Specifically, the average premium rate per \$100 of insurance earnings has decreased about 50% since 2016. In other words, this consultation is not only unnecessary but also ridiculous. TEAs should be paying more in order to avoid incentivizing their use, and TEAs complaining about paying more should not change this much needed correction to the system. This would of course be unnecessary if the WSIB abolished its flawed system of charging premium rates based on claims experience, which is not in fact an accurate measure of health & safety and only incentivizes aggressive claims management and claims suppression. A better alternative would be to create a much simpler flat rate system with perhaps two rates.

**From:** Paul Taylor  
**To:** [Consultation Secretariat](#)  
**Subject:** TEA Consultation  
**Date:** Tuesday, June 14, 2022 12:01:57 PM  
**Importance:** High

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Hi,

I am an injured worker, and I am very disappointed that the WSIB is looking to back track on its original plan to charge TEAs the same premium rates as their clients. The entire reason why that was proposed (and deemed necessary) was to remove the cost benefit of businesses hiring TEAs to do more dangerous work because it avoided claims costs and kept premiums low. Doing anything short of charging TEAs the same premium rates as their clients does not remove the incentive to contract out dangerous work and defeats the whole purpose of the proposal. In other words, increasing the rates of TEAs in order to match those of their clients is the very essence of the solution, and so to suggest a new plan is needed because TEAs are concerned about an increase in their costs is nonsense. Increasing the costs of TEAs was the very purpose of the proposal. Even if the premium rates of TEAs were to increase significantly, rates would still probably be lower than they were 5 years ago given all the rate reductions and rebates that have been given to employers in recent years. Specifically, the average premium rate per \$100 of insurance earnings has decreased about 50% since 2016. In other words, this consultation is not only unnecessary but also ridiculous. TEAs should be paying more in order to avoid incentivizing their use, and TEAs complaining about paying more should not change this much needed correction to the system. This would of course be unnecessary if the WSIB abolished its flawed system of charging premium rates based on claims experience, which is not in fact an accurate measure of health & safety and only incentivizes aggressive claims management and claims suppression. A better alternative would be to create a much simpler flat rate system with perhaps two rates.

Paul Taylor

**From:** [sandy doleman](#)  
**To:** [Consultation Secretariat](#)  
**Subject:** Temporary Employment Agency rate setting  
**Date:** Wednesday, June 15, 2022 11:43:47 AM

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Temporary employment agencies should pay higher rates and face more scrutiny than their class as they exist to exploit and rob workers, deny their rights and endanger them.

Sandy Doleman

**From:** [Steve Mantis](#)  
**To:** [Consultation Secretariat](#)  
**Subject:** Consultation TEAs  
**Date:** Thursday, June 16, 2022 10:14:49 PM

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Greetings,

I am an injured worker and I am very disappointed that the WSIB is looking to back track on its original plan to charge Temporary Employment Agencies (TEA) the same premium rates as their clients. The entire reason why that was proposed (and deemed necessary) was to remove the cost benefit of businesses hiring TEAs to do more dangerous work because it avoided claims costs and kept premiums low. Doing anything short of charging TEAs the same premium rates as their clients does not remove the incentive to contract out dangerous work and defeats the whole purpose of the proposal.

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We look for fairness in our public system. Injured workers complaints have not changed WSIB policy - why should Temporary Employment Agencies get better service than the workers the system is meant to protect?

This would of course be unnecessary if the WSIB abolished its flawed system of charging premium rates based on claims experience, which is not in fact an accurate measure of health & safety and only incentivizes aggressive claims management and claims suppression. A better alternative would be to create a much simpler flat rate system with perhaps two rates, much like our well respected health care system - OHIP. We don't hear of TEA complaining about paying their OHIP premiums.

Thank you for including these comments in your review.

All the best,

Steve Mantis

**From:** [Sue James](#)  
**To:** [Consultation Secretariat](#)  
**Subject:** TEA consultation  
**Date:** Tuesday, June 14, 2022 12:10:50 PM

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I am a Worker who has witnessed the erosion of the compensation system over 3 decades with the approval of the government. I am very disappointed that the WSIB is looking to back track on its original plan to charge TEAs the same premium rates as their clients. The entire reason why that was proposed (and deemed necessary) was to remove the cost benefit of businesses hiring TEAs to do more dangerous work because it avoided claims costs and kept premiums low. Doing anything short of charging TEAs the same premium rates as their clients does not remove the incentive to contract out dangerous work and defeats the whole purpose of the proposal.

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Sincerely,  
Sue James