

I N V I S I B L E WORKERS

HEALTH RISKS FOR
TEMPORARY AGENCY WORKERS

2016 REPORT OF THE DIRECTOR OF PUBLIC HEALTH FOR MONTRÉAL



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Published by
Direction régionale de santé publique
CIUSSS du Centre-Sud-de-l'Île-de-Montréal
1301 Sherbrooke Est
Montréal, Québec H2L 1M3
Telephone: 514-528-2400
www.dsp.santemontreal.qc.ca

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Lindsay Larios, Manuel Salamanca Cardona and Nuha Shaer, as part of a project funded by the Social Sciences and
Humanities Research Council of Canada's Insight program (2013-2019) entitled Placement and Recruitment Agencies:
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NOTE: The term "agency workers" is commonly used in the field of occupational health and
safety standards to designate employees who work for temporary employment agencies.

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CIUSSS du Centre-Sud-de-l'Île-de-Montréal, 2016

ISBN 978-2-550-78718-1 (PDF version)
Legal deposit – Bibliothèque et Archives nationales du Québec, 2017
Legal deposit – Library and Archives Canada, 2017

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A MESSAGE FROM THE DIRECTOR

Work is central to people's lives. It determines income and social integration. It can provide intellectual stimulation and a sense of personal growth. Unfortunately, many of our fellow citizens are exposed to serious health risks associated with work, whether due to exposure to hazardous products, or to the probability of trauma or mental health problems such as anxiety and depression.

The report looks at temporary agency workers, many of whom live and work in very precarious conditions. Three recent findings influenced our choice of topic: First, the temporary employment agency sector has grown significantly over the past 10 years. Second, the reality of this sector is hard to grasp since there are relatively few statistics on this issue. Third, our teams in the field have also testified to the difficulties they face in applying prevention programs in this context. Our job is to protect the health of workers on the island of Montréal regardless of their employment status, and so this situation is a troubling one.

The significant risks that agency workers face due to the precarious nature of their work and to multiple placements are reported in the scientific literature, as are suggestions to reduce the risks by changing current practices and regulations. The goal of this report is to lay out both the problems and the solutions, so that all workers may be properly protected and agency workers benefit from the same preventive measures as permanent workers. Society is changing; our practices and laws must adapt.

During the course of writing this report, we consulted many partners, researchers and stakeholders. They helped us gain a better understanding of the situation and enabled us to validate the recommendations we are putting forward. We would like to thank them all for their time and expertise. We also wish to thank the professionals at Institut de recherche Robert-Sauvé en santé et en sécurité du travail, who gave us access to their work.



Richard Massé, MD
Director of public health for Montréal

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LIST OF ACRONYMS

ARHSSS	Act respecting health services and social services
ARIAOD	Act respecting industrial accidents and occupational diseases
AROHS	Act respecting occupational health and safety
CNESST	Québec's occupational health and safety board (Commission des normes, de l'équité, de la santé et de la sécurité du travail)
CNT	Commission des normes du travail (now CNESST)
CSST	Commission de la santé et de la sécurité du travail (now CNESST)
EQCOTESST	Québec Survey on Working and Employment Conditions and Occupational Health and Safety
INSPQ	Québec national public health institute (Institut national de santé publique du Québec)
IRSST	Robert Sauvé research institute for occupational health and safety (Institut de recherche Robert-Sauvé en santé et en sécurité du travail)
ISQ	Québec institute for statistics (Institut de la statistique du Québec)
MSSS	Québec ministry of health (Ministère de la Santé et des Services sociaux)
MTESS	Québec ministry of labour, employment and social solidarity (Ministère du Travail, de l'Emploi et de la Solidarité sociale)
NAICS	North American Industry Classification System
PHA	Public Health Act

SUMMARY

The growth of non-standard employment in the labour market contributes to the precarious living and working conditions of many workers. Although all forms of non-standard employment are not necessarily precarious, these jobs usually provide less social protection and pay lower wages. Over the past few years, obtaining work through a temporary employment agency—a non-standard form of employment—has expanded significantly in Québec and Canada, which suggests that the number of workers in precarious work situations has also grown.

Given the lack of knowledge on the health impacts of precarious employment and its potential to increase social inequalities in health on the island of Montréal, the director of public health for Montréal has focused on temporary employment agency workers for his 2016 report. The report has two main objectives: draw up a profile of agency workers' working conditions, and propose a roadmap likely to improve those conditions.

Temporary Employment Agencies

Revenu Québec defines temporary employment agencies as enterprises whose activities consist in offering personnel placement services or temporary help services to meet the temporary workforce needs of clients, for a fee or other payment.

Although the triangular employment relationship is typical of multiple forms of employment, it is particularly problematic in cases where a job is obtained from an agency. Agency and client employer both

act as employers, and their respective responsibilities toward workers are not clearly defined (for example, providing personal protective equipment and training). On one hand, agencies hire, manage and pay the workers, but often have no control over working conditions. On the other hand, client employers temporarily assign agency workers to given tasks, but are not officially recognized as having the accompanying responsibilities.

International Scientific Literature

Workers from agencies are at higher risk for occupational injury. Research conducted in many countries has shown that agency workers' rates of injury are not only higher—two to three times higher in some sectors—but the injuries are also more serious, when compared with injuries incurred by permanent staff. Other studies indicate that using the services of an agency is associated with higher risks of accidents for the client employer's regular staff.

Risk factors related to the health and safety of agency employees, such as employment insecurity, income uncertainty, low wages, irregular schedules and multiple job holding, are linked to workers' economic situations. Those factors, which characterize jobs obtained through agencies, require workers to stay employed to ensure a minimum income. This situation can cause various dangerous practices to arise, including work intensification, cutting corners, accepting to take on hazardous tasks, working when injured, or multiple job holding.

Workplace organization is another determining factor related to the risks of occupational injury. Because of the triangular employment relationship, employers' obligations are rather vague and poorly defined when it comes to occupational health and safety. Therefore, it is not surprising that following protocols and safety regulations poses difficulties, that knowledge of prevention and management systems is fragmented, and that task communication and coordination mechanisms are weakened. This is especially challenging because agency employees work mainly in sectors where the risks of occupational injuries are high, that is, in manufacturing, transport and warehousing.

Various studies reveal that client employers often contract out hazardous tasks and assign them to agency workers rather than to their own employees.

Québec Statistics on Agency Workers

In Québec, agency jobs are mostly filled by men (60%). They are relatively young (41% under 35) and their levels of education mixed: 52% finished high school and 45% completed post-secondary studies (24% college and 21% university). However, most of those jobs require relatively few skills. Agency workers are mainly assigned jobs in the following sectors: manufacturing (20%), transport (10%), warehousing, (10%) and finance, insurance or banking services (10%). Most of the workers live in Montréal (53%) or its outskirts (28%). About a third (32 %) of agency workers in Québec were born outside Canada, 43% of whom have lived in Québec for at least 10 years.

As is the case in most countries, agencies are concentrated in large urban centres. In the province of Québec,

81% of agencies are located in Montréal and surrounding areas.

The CNESST estimates that the risk of occupational injury is between “high” and “extreme” for workers from temporary staffing services. Agency workers account for a higher proportion of injuries leading to lost hours of work that resulted in compensation, compared with injuries sustained by workers in other sectors. This is especially true for musculoskeletal injuries and traumatic accidents. The occupational vulnerability of agency workers means that agency employees hesitate to report occupational injuries and file for compensation. Underreporting of occupational injuries is the greatest obstacle to thorough evaluation of the health status of temporary agency workers.

We still know very little about the temporary employment agency sector in Québec (number and size of agencies, client employers, training practices, etc.) and even less about the workers themselves; their number and the real risks to which they are exposed remain largely unknown.

Deficiencies in Occupational Injury Prevention

Despite a clearly defined mandate, occupational health and safety teams face many challenges. The “Other commercial and personal services” sector, which includes employment agencies, is not covered by prevention mechanisms provided for in the *Act respecting occupational health and safety*.

The protections mandated by labour laws also fail workers employed by agencies. The director of public health is concerned about the regulatory gaps related to the application of the *Act respecting*

occupational health and safety and, to a lesser extent, of the *Act respecting industrial accidents and occupational diseases*.

Given the analysis described above, and based on Ontario's and Australia's experiences with changing their legal frameworks, three possible solutions are presented here. They concern employers' responsibilities, risk outsourcing, and underreporting of occupational injuries.

1. Clarifying obligations related to worker protection

With regard to the obligations cited in the *Act respecting occupational health and safety*, a source of inspiration should be Ontario's legislative approach, which gives a broad definition of the concept of employer.

2. Discourage outsourcing of risks

Because the workers' compensation system is funded on the basis of employers' past experiences, it could be financially advantageous for client employers to contract out hazardous tasks to agency workers. Currently in Québec, although client employers control working conditions, injuries sustained by agency workers do not affect employer contribution rates but rather those of agencies.

3. Discourage underreporting of occupational injuries

Underreporting is worse in Québec, the only province in Canada where employers do not have to report all occupational injuries sustained by workers to the appropriate government body (CNESST).

Conclusion

The process adopted by the director of public health has generated various findings related to precarious employment and the vulnerability it engenders. **First, there is little knowledge about the health impacts of precarious employment in Québec. Second, because there are no intervention policies adapted to non-standard forms of employment,** workers assigned to those jobs are regularly excluded from prevention practices designed to protect worker health and safety. **Third, the occupational health and safety legal framework is unclear** when it comes to the occupational health and safety responsibilities concerning temporary agency workers, and fosters outsourcing of work-related risks.

Based on available knowledge, Montréal's director of public health has drawn a profile of the health status of agency workers, the risks to which they are exposed and the actions public health must take to incorporate this reality into its initiatives. However, to have significant and enduring effects, stakeholders must get involved and legislators must make the necessary changes.

INTRODUCTION

ALEJANDRO'S Story

“ I am a refugee claimant (...) but my claim has been rejected. I am living and working in Montreal while compiling my case for an appeal. Working for a temporary employment agency is my best opportunity for income, given my current immigration status. The agency told me to show up at the metro station at 6am each morning. When I arrive, there are a number of workers there that the agency assigns to different vehicles. Each vehicle is going to a different factory or farm located outside the city in need of workers. Sometimes when I am lucky I get sent to the cucumber farm, other times I may be sent to the quail farm, or another place. I am not often told ahead of time where I will be working that day or what the pay or hours will be. If I object, there are many other workers eager to take my place in the vehicle. The quail farm is the worst. My job there is to feed the birds and pick up eggs. While I am given some gloves, I wish they would also provide a mask. It is clear to me that the pens where the quails are kept are rarely cleaned and filled with feces. The smell is unbearable and I am worried about the toxins and particles I am breathing in when working there. I do not want to ask for a mask from the agency or the farm because I do not want to be labelled as a troublemaker and risk not getting any work next time. ”

Source: HANLEY, J. (P.I.), EID, P. Recruitment and Placement Agencies: Silent partners in migrant employment. SSHRC Insight Grant.

INTRODUCTION

Under sections 53 and 55 of the *Public Health Act*, and section 373 of the *Act Respecting Health Services and Social Services*, the director of public health is responsible for identifying situations in his territory which could pose a threat to the population's health. He is also tasked with informing the population of those risks, and of best practices and policies to counter and prevent them (see Appendix 1). In this context, the director of public health regularly publishes monographs that focus on the scientific literature and on Montréal data, and that put forward recommendations and possible solutions to reduce risks and their health impacts. For the director, reducing social inequalities in health is crucial and a top priority.

For several years now, the Direction régionale de santé publique de Montréal (CIUSSS du Centre-Sud-de-l'Île-de-Montréal) has participated in projects related to the impacts on worker health and safety of recent changes in the labour market, characterized by a surge in various forms of precarious employment [1–4]. These projects have shed light on the shortcomings in the current system to protect workers in precarious work situations identified by public health professionals and their partners [2].

Given the lack of knowledge about the health impacts of precarious employment affecting a growing number of workers and of the potential to increase social inequalities in health on the island of Montréal, the director has focused his

2016 report on temporary employment agency workers. The title “Invisible Workers” highlights the flaws in current monitoring systems, for which these workers are too often invisible. He also wanted to ensure that those workers are identified and properly taken care of during preventive interventions carried out by occupational health teams. Finally, the director believes it is important that the regulatory framework be better adapted to various facets of workers' realities.

The report has two main objectives: draw up a profile of agency workers' employment conditions, and propose a road-map likely to improve those conditions. The first step was to conduct a review of the scientific literature on this topic. After exploring public health department databases, new analyses were carried out in collaboration with the Institut de recherche Robert-Sauvé en santé et en sécurité du travail (IRSST). Researchers from Québec and elsewhere were also called upon to review preliminary versions of our study, identify pertinent sources of information and take a critical look at the solutions put forward.

Throughout this project—and this is probably its most promising aspect—a broad range of professionals were met with three goals in mind: share with them the analysis of the problems and the vision; discuss whether or not the recommendations are pragmatic, given the current situation; and ascertain that their cooperation will be ongoing.

These groups (see Appendix 2) include representatives of employers, unions and community groups, public health and occupational health professionals, professionals from ministries and other stakeholder organizations, provincial and municipal elected officials, and agency workers.

In the first chapter, the report describes the overall context in which temporary employment agencies operate in 2016. Data on the importance of these agencies in

Québec and Montréal are presented and the triangular employment relationship is defined; the consequences of the latter are addressed in subsequent chapters.

The second chapter looks at the scientific literature on the health impacts of precarious employment. It reveals different types of precarious conditions linked to working for an agency and their consequences, such as job insecurity, temporary employment and social inequalities in health.

MONTRÉAL in a Nutshell

There are 1.9 million people living in Québec's metropolis, about a fourth (24%) of the province's total population. The agglomeration of Montréal encompasses 16 neighbouring municipalities, including the City of Montréal that accounts for 87% of the population. Almost half (49%) of the total population of the Montréal Census Metropolitan Area live in Greater Montréal, which totals 3.8 million people and includes cities on its north and south shores.¹

Almost half (49%) of Montrealers have French as a mother tongue, 17% have English and 34% another language. This linguistic reality is an indication of the broad cultural diversity that is due to the fact that nearly one in three Montrealers was born outside the country (33%).²

With its cultural, academic, economic and financial centres and the head offices of several governmental and international institutions, Montréal and its metropolitan area account for roughly a third of Québec's GDP—\$163.7 billion in 2013.³ However, this wealth is very unevenly distributed across the population. At the top of the economic pyramid, 11% of households have annual incomes over \$100 000; at the bottom, 23% of households live on less than \$20 000 a year. In Montréal, over 450 000 people, a quarter of the population, live under the low income cutoff. Among children under 6, this figure climbs to 29% (36 915 children), compared with 17% for the province as a whole⁴.

.....

1 2011 National Household Survey

2 2011 National Household Survey

3 2013 Data, *Conference Board of Canada*

4 2011 National Household Survey

Canadian and international data on risks of occupational injuries among agency workers make up Chapter 3. The risks are situated in the specific contexts of economic vulnerability, workplace organization and the current regulatory framework.

Chapter 4 presents the most recent provincial statistics on the health of agency workers as well as possible solutions to improve surveillance systems and expand knowledge about this issue.

Current preventive practices and avenues available to improve them are covered in Chapter 5.

Finally, Chapter 6 addresses weaknesses in the legal framework. It looks at legislation in Ontario and Australia, as well as European frames of reference.

Using the best available knowledge, Montréal's director of public health wants to make health protection a concrete and attainable goal that will have an effect on all workers in the city, some of whom are currently unprotected by the law.

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1

**ECONOMIC CONTEXT,
PRECARIOUS EMPLOYMENT
AND TEMPORARY
EMPLOYMENT AGENCIES**

ECONOMIC CONTEXT, PRECARIOUS EMPLOYMENT AND TEMPORARY EMPLOYMENT AGENCIES

In Canada and other industrialized countries, the labour market is changing. **Non-standard forms of employment, such as working for temporary employment agencies, working part-time, temporary work and self-employment, are flourishing in Québec and elsewhere** [1–6]. Those forms of employment are deemed non-standard, that is, these jobs are not permanent, full-time or linked to a single employer.

New Workplace Realities

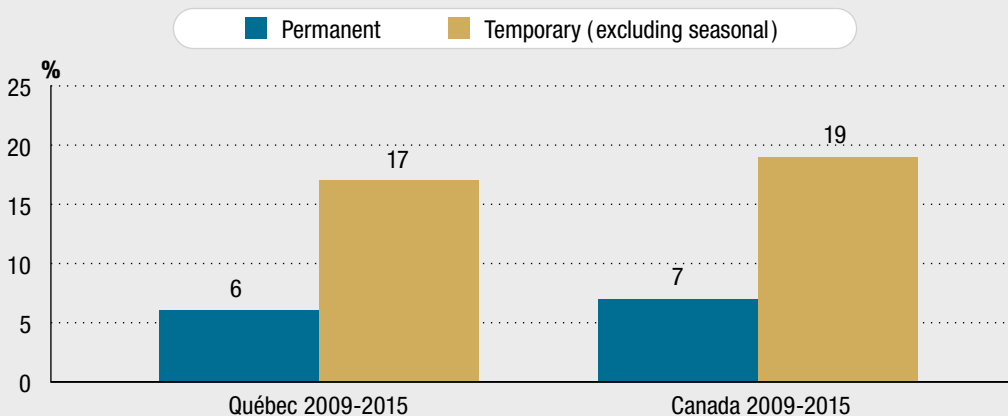
In Canada over the past 20 years, the number of part-time jobs has risen much faster than the number of full-time jobs [7]. During this same period, self-employment

has grown more rapidly than salaried positions; in 2014, the number of self-employed workers rose four times faster than the number of employees [7]. In addition, the long-term trends observed over several years suggest that the decline in employment quality is more structural than cyclical [7].

For instance, in Québec in 2014, 20% of the 4 059 700 salaried workers were employed in part-time jobs, and 14% (557 900) of all workers in Québec were self-employed [8].

Similar findings emerged from an analysis of Statistics Canada's data on temporary work [9]. **For the period 2009 to 2015 (Figure 1), temporary employment grew almost three times faster**

FIGURE 1. RELATIVE DISTRIBUTION (%) OF PERMANENT AND TEMPORARY JOBS CREATED FROM 2009 TO 2015 IN CANADA AND IN QUÉBEC



Source: Calculations based on Statistics Canada, CANSIM table 282-0080

than permanent jobs, in Québec and in the rest of the country.

The marked increase in these forms of employment over the past few decades is due to organizational changes caused by profound transformations in the job market, in a context of globalization: restructuring and downsizing in the private and public sectors; privatization of public sector activities; increased work intensity; decline in job security, and growing use of outsourcing and temporary employment agencies [10]. This is due to various factors: firms seeking to enhance flexibility so they can respond to a highly-competitive globalized market; weakening union influence; government policies designed to promote labour market 'flexibility' and weaken collectivist regimes to reduce budget deficits [10,11]. Those changes in the job market have forced workers to develop greater flexibility and increased versatility that, in turn, have caused employment and working conditions to deteriorate in most industrialized countries [12]. However, some sectors have normalized precarious employment and incorporated this approach in their management practices, irrespective of the new realities in the labour market.

The growth of non-standard employment contributes to the precarious working conditions of an increasing number of workers, and the health consequences are often very negative. According to Rodgers [13], work is considered precarious when several or all of the following characteristics are present:

1. Higher risk of job loss
2. Poor control over working conditions
3. Ineffective systems to protect workers, including lack of access to social security benefits
4. Low income that harms workers' capacity to meet their needs

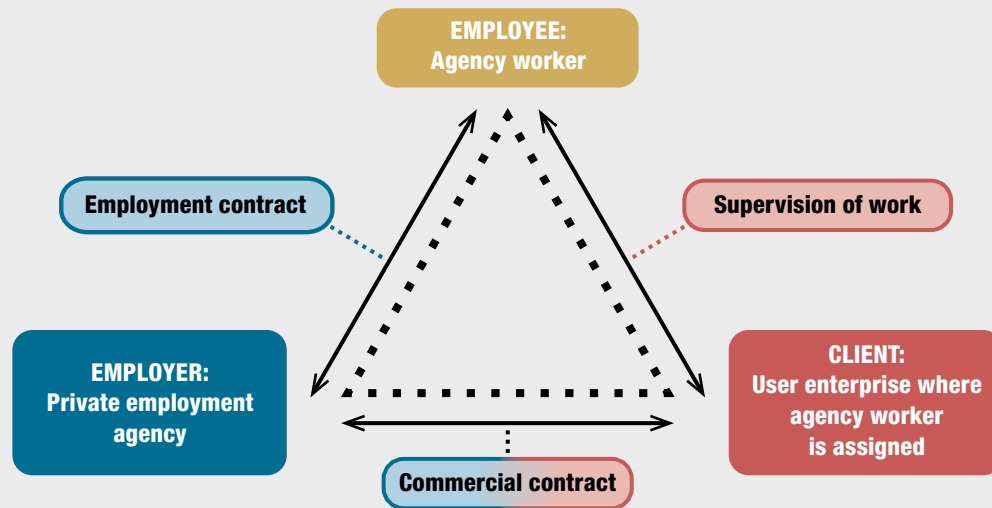
A more recent definition proposed by Amable [14] adds two other characteristics:

5. Greater vulnerability linked to social and power relationships (being isolated from other groups of workers)
6. Workers' limited capacity or inability to exercise their rights

Although not all non-standard jobs are necessarily precarious, temporary and part-time work as well as self-employment generally provide less adequate social protection and pay lower wages, conditions associated with precarious employment [15,16]. Similarly, one probable consequence of the growth in non-standard employment over the past 20 years is that the number of low-wage jobs has risen rapidly over this period [7].

The 2007-2008 Québec Survey on Working and Employment Conditions and Occupational Health and Safety (EQCOTESST) makes it possible to quantify precariousness associated with the new realities of the job market [17]. The precarious employment indicator developed for this study combines indices of job insecurity and contractual precariousness. The indicator of precarious employment concerns the following workers: people with low job seniority or who fear losing their jobs, especially agency workers; those whose employment relationship is threatened by reorganizations; and individuals who are in and out of the job market on a regular basis or who have experienced a period of unemployment over the past two years. The contractual precariousness indicator includes not only agency workers, but also part-time employees who want to work more hours, individuals who have become self-employed upon request of the employer, and those with term employment. According to EQCOTESST data, in 2007-2008, 7% of

FIGURE 2. TRIANGULAR EMPLOYMENT RELATIONSHIP: AGENCY – WORKER – CLIENT EMPLOYER¹



1 Based on an illustration of the International Confederation of Private Employment Agencies (CIETT): *The agency work industry around the world* (Brussels, 2009), p. 28

workers were in situations where their employment was precarious, with women and low-income workers¹ being overrepresented (8% and 11% respectively).²

Temporary Employment Agencies

Revenu Québec defines temporary employment agencies as enterprises whose activities consist in offering personnel placement services or temporary help services to meet the temporary workforce needs of clients, for a fee or other payment [18].

Temporary employment agencies come under the “Employment Services Sector” group in the North American Industry Classification System (NAICS).³

Temporary staffing services represents 53% of the industry group's sales, compared with permanent placement and contract staffing services (38%), and other goods and services (9%).⁴

Agencies act as intermediaries between workers looking for employment and firms who want workforce flexibility to increase their competitiveness in the economic market place [19]. In a triangular relationship, two contracts bind parties: an employment contract between the agency and its workers, and a commercial contract between the agency and the client employer (Figure 2).

Operating revenue for the employment services industry group has more than doubled since the early 2000s. In 2014, it was \$13.3 billion for Canada and \$1.4

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1 Salary under \$20 000.
 2 EQCOTESST underestimates the figure because of lower response rates among low-income and poorly-educated individuals, young people, allophones and immigrants, compared to other respondents.
 3 Innovation, Science and Economic Development Canada. Employment Services (NAICS 5613): Definition. [Online]: Available from www.ic.gc.ca.
 4 Statistics Canada. Employment Services, 2014 [Online]. 2016. The Daily. 9 March. Available from www.statcan.gc.ca.

billion for Québec [9]. Private firms accounted for 87% of service industry sales, while government and public institutions accounted for 9.1%. The remainder of sales was to individuals and clients outside Canada [9].

In Québec, like in Canada, the number of jobs in the Employment Services sector varied greatly between 2004 and 2014. According to Statistics Canada [9], it was 11% countrywide for this period. From 2009 to 2014, job growth in the Employment Services sector was almost four times higher than in all other economic sectors throughout the country; in Québec, it was 75% higher than in all other sectors combined. However, since 2008, the economic recovery has not been as strong in Québec as in the rest of Canada. We know that agency workers are often the first to be let go in times of economic slowdown, but often the first to be rehired when recovery begins [19]. When Québec's economy strengthens, it is likely that the growth rate in this sector will continue to rise in Québec as it has in the rest of the country (Figure 3).

Just like in all other Canadian provinces, the jobs available through agencies in Québec are mostly filled by men (60%), who are relatively young (41% under 35) and have mixed levels of education: 52% have completed high school and 45% post-secondary studies (24% college and 21% university). However, most available jobs require relatively few skills [20–23]: 35% are manual labour jobs, 20% clerical positions, 15% service occupations, and 13% skilled or semi-skilled jobs. Agency workers are mainly employed in manufacturing (20%), transport (10%), warehousing (10%) and finance, insurance or banking services (10%) [23]. A majority of these workers live in Montréal (53%) or its outskirts (28%) [23]. In 2012, a minority (14%) were attending school (9% full time and

THE EMPLOYMENT Services Industry

The Employment Services Industry includes establishments whose activities can be separated into two broad categories:

The first comprises temporary help services, also called personnel placement agencies or temporary employment agencies. Their main activity is to supply workers for limited periods of time to supplement the client's workforce.¹

The second is composed of firms whose activities include hiring and recruiting personnel, and headhunting. They mostly engage in referring and placing applicants in employment, either on a permanent or temporary basis. This category is not targeted by this report, given that employment conditions do not present obstacles to accessing services to prevent occupational injuries.

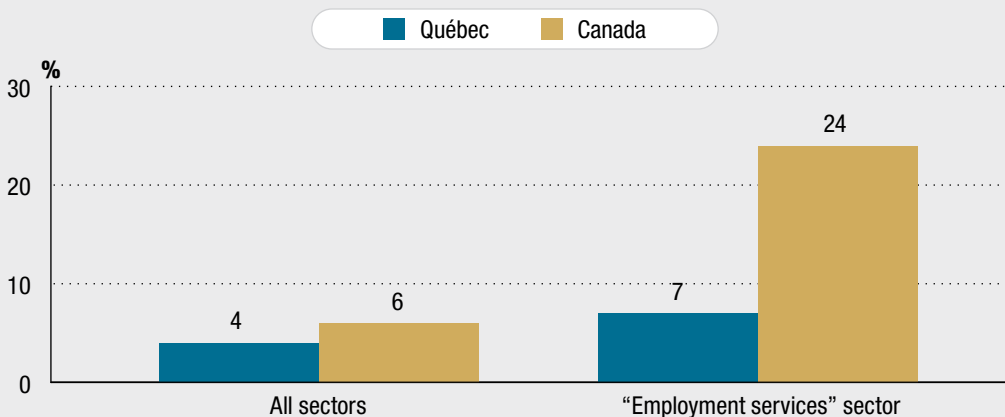
However, in the agency world, it is not always easy to distinguish firms who simply place employees from those who rent out employees to third parties. An agency may engage in either or both activities, no matter how it defines itself.

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¹ As defined by the North American Industry Classification System (NAICS). Available from www.ic.gc.ca.

5% part time). These are the findings of a survey carried out that year by Léger Marketing for the Commission des normes du travail [23]. It is the only major study that draws a province-wide sociodemographic profile of this group of workers. Finally, about a third (32%) of agency workers in Québec were born outside Canada: most of them were born in Africa (34%) or countries in North and South America (37%), while people born in Haiti make up about a quarter of agency workers born outside Canada [23]. 43% of these immigrants have lived in Québec for at least 10 years [23].

FIGURE 3. RELATIVE DISTRIBUTION (%) OF JOBS CREATED IN ALL SECTORS AND IN THE EMPLOYMENT SERVICES SECTOR FROM 2009 TO 2014 IN CANADA AND IN QUÉBEC



Source: Calculations based on Statistics Canada, CANSIM table 281-0024

As is the case in most countries, agencies are concentrated in large urban areas. In Québec, 81% of the agencies are located in Montréal and surrounding areas (53% and 28% respectively) [23]. Most agencies in Montréal are small single establishments (69%); the others are multi-site (37%), some of which are multinationals. The number of employees varies greatly for the two types: small agencies have an average of 250 employees; others an average of 1 160 [23].

It is impossible to know exactly how many temporary employment agencies are active in Québec, or the number of workers they employ [24,25].

Records at Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) show that in 2012 in Québec, 971 employers in 2 590 firms were classified as agencies⁵ [26]. More

than 9 out of 10 employers the CNESST considered as agencies were located in the Greater Montréal area (Table I).

However, an undetermined and possibly high number of agencies were not registered with the CNESST (based on observations in the field) nor with taxation authorities [18]. In 2012, to conduct an investigation of this sector, the Commission des normes du travail had identified, using various sources, 511 temporary employment agencies in Québec [23]. One researcher assessed that there were over 42 500 agency workers employed in Québec in 2011, basing his estimate on the average number of workers in the 132 agencies who responded to the study questionnaire [24]. The 2011 National Household Survey⁶ determined there were 30 389 agency workers in Québec [26]⁷. One thing is certain: given the strong

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5 Employer records refers to an activity billed by the CNESST according to the level of risks of the activities carried out in an establishment. It determines the fees the employer must pay, based on total payroll expenditures. An employer may have several employer records, depending on the activities carried out. Having an agency employer record does not necessarily mean that a firm is solely dedicated to placement services or temporary employment services.

6 The survey has some biases due to the high non-response rates of some social groups [27].

7 The household survey and the 2006 and 2016 long-form censuses significantly underestimate the percentage because of how the questions identifying profession and sector were formulated.

growth in activity in this sector, we can say that the current number of agency workers in Québec is very likely higher than in 2011.

Since 1 March 2016, agencies have had six months to conform with a new regulation that requires them to possess a valid Attestation from Revenu Québec and give a copy to their clients when signing new contracts to provide placement services and temporary help services [18]. In the future, it will be easier to estimate the number of agencies in Montréal and elsewhere in the province.

Triangular Employment Relationship

Although the triangular employment relationship is typical of multiple forms of employment, it is particularly problematic in cases when work is obtained through an agency. The notion of employer, understood in labour law as a binary (employer-employee) relationship, loses its primary meaning for a very good reason: the agency and its client both act as employers, and their respective responsibilities toward workers are not clearly defined (for example, providing personal protective

equipment and training). On one hand, agencies hire, manage and pay the workers, but often have no control over working conditions. On the other hand, client employers temporarily assign agency workers to given tasks, but are not officially recognized as having the accompanying responsibilities.

The following chapters will more thoroughly examine various aspects of the triangular employment relationship.

Conclusion

The growth of non-standard employment in the labour market in Québec and Canada contributes to the precarious living and working conditions of a growing number of workers. Although not all forms of non-standard employment are necessarily precarious, they usually create conditions associated with precarious employment. They also generally provide less adequate social protection and pay lower wages.

Over the past few years, the number of temporary employment agencies has increased significantly in both Québec and Canada, which may indicate that the number of workers in precarious work situations has also grown.

TABLE I DISTRIBUTION (NO. AND %) OF EMPLOYERS WHOSE USE OF TEMPORARY EMPLOYMENT AGENCIES IS RECORDED IN THEIR CNESST EMPLOYER RECORDS, BY REGION, QUÉBEC, 2012

	EMPLOYERS	
	Number	%
Island of Montréal	496	51
Outskirts of Montréal (Laval, Laurentides, Lanaudière and Montérégie)	406	42
Other regions	69	7
Total Québec	971	100

Source: Boucher and Duguay, 2016 [26]

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2

**HEALTH IMPACTS OF
PRECARIOUS EMPLOYMENT**

HEALTH IMPACTS OF PRECARIOUS EMPLOYMENT

Work is one of the main determinants of health. It can also be a vector of inequality by damaging the health of employees exposed to adverse working and employment conditions [1]. Because of a lack of studies looking specifically at the health impacts of working for an agency,¹ the literature reviewed here pertains to the health effects of precarious employment in general, but can also be applied to working for an agency.

In Québec, findings of the EOCOTESST study indicate that workers in situations of precarious employment are at higher risk of workplace accidents [2]. In other countries, many of the studies, described later, have shed light on the health risks of various working conditions and types of jobs linked to precarious employment. Job insecurity and temporary employment are associated with a number of physical and psychological health problems as well as their risk factors.

It should be noted that effects on the health of employees differ when workers rather than employers choose flexible working conditions. When imposed, flexible working conditions and associated types of employment, such as some types of temporary work, increase the probability of negative health effects [3].

Job Insecurity

Job insecurity is defined as being concerned about losing one's job in the future [4]. Many

studies have described the correlation between job insecurity and poor physical and mental health.

Health Effects

Job insecurity is associated with increased risk of mortality, heart failure, myocardial infarction and heart disease, even when other factors such as medical history of diabetes, hypertension or other conditions are factored in [5–7].

It is also associated with higher risks of musculoskeletal problems, which can temporarily or permanently restrict physical activity [8–10]. According to the World Health Organization [11], sedentary behaviour increases the risk of cardiovascular diseases.

Workers experiencing chronic job insecurity generally consider themselves to be in poorer health than other groups of workers [12,13].

A systematic review of the scientific literature designed to examine the effects of job insecurity on occupational health and safety noted a remarkable concordance in study results; an analysis revealed that 85% of the 86 studies found poorer occupational health and safety outcomes linked to job insecurity [14]. This finding was reinforced by the quality of the studies, more than 50% of which were longitudinal and almost a third had very large study samples (> 2000 subjects) [14].

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1 Except for occupational injury risks, discussed in Chapter 3.

Mental Health Effects

People exposed to job insecurity have higher rates of anxiety and depression, poorer self-rated health and higher rates of psychological distress than other workers [4,13,15–20]. For example, an American study of more than 400 workers revealed that workers who believed they would lose their jobs during the 12 months following the study were three to six times more likely to meet criteria for depression and anxiety than other workers, after adjusting for participants' employment status and sociodemographic characteristics [13]. A Whitehall cohort study of British civil servants demonstrated that loss of job security led to minor psychiatric problems, which are not completely reversed when workers regain job security [12].

Workers who experience job insecurity are also exposed to multiple risk factors that are harmful to their mental health. Low-income workers are at greater risk than any other group of workers to be isolated at work and in their social lives [21]. In addition, they are more likely to have sleep problems [15,22,23]. Job insecurity also has a negative impact on self-esteem [24].

Temporary Employment

Like job insecurity, temporary employment, including working for an agency, on-call or on a fixed-term contract [25] increases workers' risks of developing health problems.

Physical Health Effects

Many studies show strong associations between temporary work and poor physical and mental health [26–37]. A 10-year Finnish cohort study of over 90 000 people revealed mortality rates that were 1.2 to

1.6 times higher among temporary workers than permanent workers, adjusting for age, sex, occupational status, salary, and change in employment status [37].

A recent longitudinal study demonstrated a correlation between negative impacts of temporary work and its duration: the longer it is prolonged, the more damaging it is to health [26]. Temporary workers have to deal with greater financial constraints and are more concerned about their personal finances than are permanent workers [34,38]; low income associated with temporary employment may possibly be one of the factors involved. A study conducted by TD Bank indicated wage gaps of over 30% between temporary and permanent employees in Canada for the same number of hours worked [39]. As we saw earlier, income is a major health determinant: it plays a large role in influencing lifestyle habits, food security, and access to housing and other necessities [1].²

Temporary employment, more specifically working for an agency, presents higher levels of job insecurity than permanent employment [13,27,34,40]. It is also characterized by job strain that arises through higher demands, limited flexibility and little control over working conditions. These are all factors that negatively affect workers' physical and mental health [27,38,41]. There is undoubtedly a link to be made with the fact that temporary workers report higher rates of fatigue, back pain and muscle pain than permanent workers [42]. They are also at greater risk of musculoskeletal injuries, given that they are more frequently exposed to intense and repetitive work than permanent employees are [29].

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2 Income is also strongly associated with work, which can partly explain the link between income and social inequalities in health.

Finally, it is important to note that there are considerable variations between different groups of workers. Agency workers present the worst health outcomes compared with people who work on call or on fixed-term contracts [27,36,38].

Mental Health Effects

Numerous studies have demonstrated higher rates of morbidity and psychological distress, as well as a greater number of symptoms of depression (up to 50% more) among workers in temporary jobs than those with permanent employment [16,28,30,32,33,35,36]. Results of a meta-analysis revealed that such an association is even stronger for people with unstable temporary jobs [35]. Those workers, especially the ones from agencies, are more unsatisfied with their jobs than other groups, which can have negative impacts on their mental health [27,33,36,42,43]. A systematic review by Joyce et al. [3] on flexible working conditions and their effects on health enhances understanding of how temporary employment can have negative health effects. Conversely, flexibility in working patterns that gives the worker more choice or control is likely to have positive effects on health [3]. However, conditions dictated by organizational interests, such as fixed-term contracts or involuntary part-time employment, can have completely opposite effects [3].

Cumulative Health Impacts

The health impacts of precarious employment result from many interacting factors. Rodgers [44] has shown that the many characteristics of precarious employment reinforce each other. In addition to job insecurity, a combination of the following factors produce discernible effects on workers' health: individually negotiated

conditions, low salaries, limited rights and protections in the workplace, and inability to assert their rights [45].

Precarious employment also affects workers' families. First, job insecurity is an obstacle to procuring housing or accessing credit [39,46]. Second, low salaries associated with precarious employment hurt families' capacity to meet their own needs [21,47]. Third, unsafe working conditions associated with some forms of precarious employment, such as working for an agency, undermine the health and safety of other groups of employees in the workplace since the latter have to deal with workers who lack experience as well as health and safety training [48,49].

Social Inequalities in Health

Precarious employment leads to social inequalities in health by disproportionately affecting some groups of workers who are more likely to have non-standard jobs [45,50]. In Canada, young people, women and immigrants are overrepresented in non-standard forms of employment [51–54]. Individuals from visible minorities working for temporary agencies are also one of those groups [55,56]. The probability of finding a job through an agency is four to five times higher for workers from visible minorities, whether or not they are new immigrants. At least this is what the results of the Survey of Labour and Income Dynamics (SLID) indicate [51].

Working for an agency combines all the characteristics of precarious employment noted earlier [44,57]. The fear is that firms' growing use of employment agencies will confine vulnerable workers to precarious working conditions that are harmful to health which, in turn, will simply increase social inequalities in health.

A JOB MARKET that Discriminates against Immigrants and Visible Minorities

An investigation by the Commission des droits de la personne et des droits de la jeunesse (CDPDJ) exposed an average discrimination rate of 35% toward candidates with first names perceived to be from cultural minorities, despite the fact that their profiles and skills were equal to those in fictitious CVs [58]. Over a third of individuals with Hispanic, Arab or African names may have been rejected due to discrimination, with Africans forming the group most likely not to be called for an interview. The high rates of discrimination uncovered by CDPDJ are similar for the private sector (37%) and non-profit organizations (35%), but very low for the public sector, due to equal access programs in public service [58].

In Québec, labour market integration of immigrants fares more poorly than in the rest of the country. Immigrants are three times more likely to have low-income jobs than individuals born in Québec. Of all Canadian provinces, the gap is highest in Québec, regardless of level of education [59]. Despite similar education levels, immigrants are more likely to have lower incomes: the probability is twice as high for individuals with no diploma, and four times greater for university graduates [59].

In Montréal, immigrants are almost twice as likely to be unemployed, and the probabilities of their having poor-quality jobs are higher than for people born in Canada. The situation is noticeably worse in Montréal than in other big cities in the country [60].

Immigrants from visible minority groups are confronted with significant structural obstacles as they search for good, stable jobs: discrimination, lack of recognition of qualifications, limited professional network, etc. [47,61]. Employment and workplace integration programs for new immigrants are often ineffective when they aim to alter personal characteristics (for instance, offering support to find a job or language classes) rather than remove structural obstacles to job market integration. This situation drives new immigrants to use the services of agencies [47]. The working conditions (work hours and irregular paycheques, low wages, multiple jobs, etc.) keep those workers in precarious jobs that offer little or no possibility of career advancement [47].

Conclusion

Working for agencies enhances the risk of precariousness. The growth of precarious work has consequences on the physical and mental health of employees, which disproportionately affects certain groups of the population such as young people and immigrants. Those risks must be taken into consideration when adapting occupational health protection systems to these new workplace realities, which will be further discussed in Chapters 5 and 6. But first, it is important to better understand factors that paved the way for this situation.

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CANADIAN AND INTERNATIONAL DATA ON RISKS OF OCCUPATIONAL INJURIES AMONG AGENCY WORKERS

CANADIAN AND INTERNATIONAL DATA ON RISKS OF OCCUPATIONAL INJURIES AMONG AGENCY WORKERS

Workers from agencies are at higher risk for employment injury.¹ Research conducted in many countries shows that agency workers' rates of injury are not only higher—two to three times higher in some sectors—but their injuries are also more serious, when compared with those incurred by permanent employees. Other studies indicate that using the services of an agency is associated with higher risks of accidents for direct-hire employees of the client employer.

Risks of Occupational Injuries

In the United States, an analysis of the claims (n=342 540) accepted by the Washington State Fund, the body responsible for workers compensation in that state, revealed that agency workers have higher rates of occupational injuries and more serious injuries than those in standard forms of employment [1]. This discrepancy varies depending on labour sectors, with rates among temporary workers being twice as high in the construction and manu-

facturing industry sectors compared with permanent employees in these sectors.

Other researchers have studied claims data from Minnesota's Department of Employment and Economic Development (n=23 923). They suggest that workers' compensation costs for agency workers are three times higher than for regular full-time workers, after controlling for factors such as age, sex, worker status, type of industry and date of accident [2]. Those costs are associated with higher frequency and severity of injury for temporary agency workers [2].

In France, an analysis of EPICEA's workplace accident database² for the year 2002 (n=676) showed that the injuries suffered by agency workers are more serious when compared with all recorded injuries (27.8% vs. 11.4%), and more often fatal (49.4% vs. 27.8% of all serious accidents) [3]. Client employers' use of temporary agency services is also associated with increased risk of accidents for direct-hire employees, who have to deal with colleagues who are

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1 The *Act respecting industrial accidents and occupational diseases* defines an employment injury as “an injury or a disease arising out of or in the course of an industrial accident, or an occupational disease, including a recurrence, relapse or aggravation.”

2 The EPICEA database houses survey data collected by prevention services following accidents.

often poorly trained for the tasks they are asked to do and lack experience [3]. Those results are corroborated by a study carried out by the Institut de recherche Robert-Sauvé en santé et en sécurité du travail (IRSST) that looked at the employment, work, and occupational health and safety conditions of nurses from private agencies. The study showed that recruiting nurses from those agencies tended to increase the workloads of regular nurses [4].

According to a Spanish study looking at workplace accidents recorded for 2000 and 2001 (n= 1 808 032), occupational injury rates are significantly higher for temporary workers (agency, fixed-term contracts, etc.) than for permanent employees [5]. Traumatic occupational injury rates are almost three times higher and fatal accidents two and half times higher among temporary workers than permanent personnel.

In Italy, researchers studied data (2000-2004) from the National Institute for Insurance against Occupational Accidents and Diseases. Results indicate that the frequency of occupational injury is significantly higher for temporary workers than for permanent workers in a same sector. The rates were 36% to 75% higher than the average for permanent workers in the sectors at highest risk [6]. Results of a similar study of 20 000 workers in Friuli-Venezia Giulia revealed the incidence rate of occupational

injuries was 2.5 times higher among agency workers than permanent staff [7].

An analysis of Finnish databases showed that prevalence of injuries is higher in the temporary agency sector than in other sectors of the country's economy, even after taking into account injured workers' sex, age and occupational category³ [8].

An Australian study of worker's compensation claims (1994-2001) in Victoria demonstrated that injury rates in this region were twice as high among agency workers than among all workers combined [9]. The study indicated that agency workers are more likely than other workers to experience falls or to be hit by moving objects; the former are also at higher risk of suffering from repetitive strain injuries.

In Québec, a study carried out by IRSST covering the years 1995 to 1997 showed that prevalence of injuries among agency workers assigned to manual labour jobs is the highest among sectors of economic activity, with 81.5 injuries per 1000 full-time equivalent employees during this period [10].^{4,5}

The CNESST estimates that the risk for occupational injury is high for workers from temporary staffing services (Figure 4). The CNESST defines the risk to be even higher, labelled as extreme, for small- and medium-sized firms in this sector.⁶

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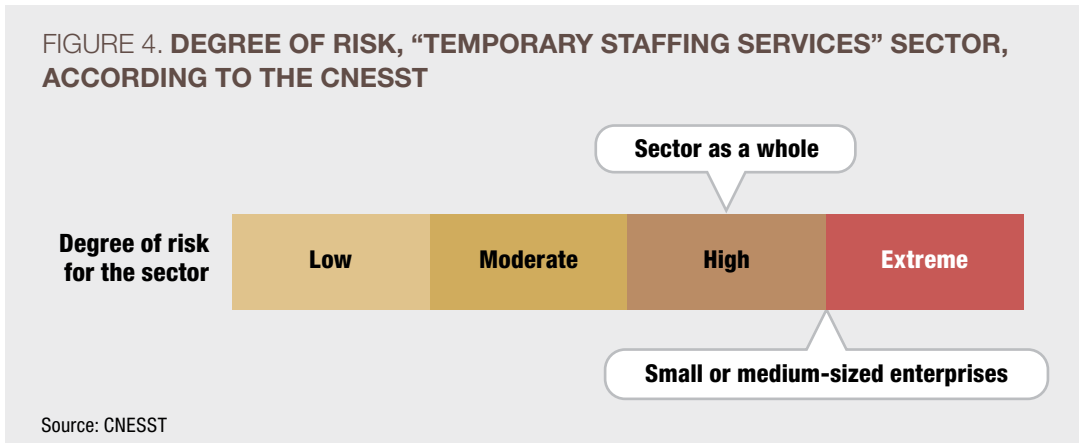
3 Factors associated with increased risk of work-related injuries.

4 The denominators used in this study are from the Canadian census. These figures are underestimated because agency employees tend to report that they work for the client employer rather than the agency, which results in the indicator being overestimated. This does not cast doubt on the high prevalence noted among agency workers: even if the denominator for number of workers were doubled, the prevalence rate of occupational injury in agencies would rank sixth.

5 Since publication in 2003 and following adoption of the SCIAN-CNESST industry classification—an adaptation of the North American Industry Classification System (NAICS) developed by CNESST—it is no longer possible to identify agencies through the occupational injury indicators published every five years by IRSST.

6 CNESST. Main risks of injury, by area of activity [Online]. Available from www.csst.qc.ca (Accessed on 20 September 2016).

FIGURE 4. DEGREE OF RISK, “TEMPORARY STAFFING SERVICES” SECTOR, ACCORDING TO THE CNESST



Contextual Elements and Risk Factors

Precarious Economic Situation of Workers

Certain risk factors related to the health and safety of agency employees, such as employment insecurity, income uncertainty, low wages, irregular schedules and multiple job holding, are linked to workers' economic situations [11]. Those factors, which characterize jobs obtained from agencies, are incentives for workers to stay employed to ensure a minimum income. This situation can lead to dangerous practices such as work intensification, shoddy work, taking on dangerous tasks, presenteeism or injuries, and multiple job holding [11,12].

Job insecurity is closely linked to the triangular employment relationship because the very nature of the work contract, which varies based on placement with client employers, means that an agency can simply decide to no longer give assignments to an individual without having to terminate his or her contract [11]. The situation is exacerbated by hiring constraints used by about a third of Québec agencies. This practice,

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7 Seasonal, fixed-term contract, casual.

reported by 32% of agency workers interviewed for a study on labour standards, consists in prohibiting agency workers from being directly hired by a client employer or risk hefty fines [13,14]. Similarly, many agencies have contracts requiring exclusivity for one or two years that limit an employee's possibility to seek work with a client of the agency [13]. Some agencies prohibit their workers from having second jobs, which increases the latter's economic precariousness [13]. In addition, half the participants in the 2012 Commission des normes du travail (CNT) survey reported that their agency required them to be available during certain periods, sometimes 10 hours a day, without remuneration and with no guarantee of a job, impeding possibilities of getting another job [13].

Irregular income, which depends on the number and duration of assignments, and **low wages** are two other risk factors for occupational injury [14,15]. When looking at similar jobs and all other types of temporary jobs⁷ in Canada, working for an agency presents the greatest wage gap compared with permanent employment: salaries are 18% lower for men and 23% lower for women, irrespective of personal charac-

LUCIA'S Story

“ I work for an employment agency doing in-home care work for the elderly and people with medical needs living at home. I came to Canada from Chile with my parents and siblings when I was young. Now I am a Canadian citizen, working and raising my six children in Montreal. I like that this work allows me to use my specialized training in senior mental health and the ongoing annual training sessions provided by the agency. I have noticed that because of this training I am sometimes asked to do medical tasks that I am not legally licensed to do. I often find myself in situations where I feel like I have to choose between doing what the agency tells me and what I think is in the best interest of the people I care for. Sometimes clients will not have the proper lifting machines in their homes and the agency will try to pressure me into taking these jobs. I try to refuse these jobs until the proper equipment is provided. I do not want to put myself or my client at risk or be held responsible for an accident. Right now I am working about 35 hours a week; though I have worked up to 60 before. I do not have a lot of control over scheduling, and often I have to decide last-minute whether to take job. I often feel obligated to take a last-minute job because I know the client needs me and I also need the work. I hope one day to be able to work for the CLSC directly where the pay is better and the scheduling not so precarious. ”

Source: HANLEY, J. (P.I.), EID, P. Recruitment and Placement Agencies: Silent partners in migrant employment. SSHRC Insight Grant.

teristics⁸ and working conditions⁹ [16]. In Québec, the situation is worse for immigrant agency workers, who are paid less and have to contend with greater numbers of, as well as shorter, assignments than Québec-born workers [13]. They are also more likely to experience violations of employment standards and use many agencies in the course of a single year [13].

According to Underhill and Quinlan, many agency workers have to contend with **irregular work schedules** that are contingent on the needs of the agency's client employers. Those workers are encouraged to be available to maximize

the number of assignments [12]. Québec data do not point to such irregular schedules, given that most agency employees have similar work schedules as permanent employees. However, individuals who work for more than one agency are more likely to have irregular schedules (a characteristic of working on call).

Furthermore, CNT data indicate that at the time of the survey, close to a quarter of agency workers who had worked more than 40 hours a week¹⁰ for a single agency had not been paid for the overtime hours they had worked. It should be noted that non-payment of

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8 Age, level of education, marital and parental status, work experience and student status.

9 Profession, industry, size of firm, part-time work, union status, and work in the public sector.

10 In Québec, employment standards specify that overtime hours worked in addition to a normal work week (40 hours) must be paid at 1.5 times the regular rate.

overtime work is one of the main problems cited in complaints filed with the CNT [13,14,17].¹¹

Concurrent employment is common among agency workers because it helps them make ends meet. The CNT survey revealed that the agency workers interviewed were registered with an average 1.6 temporary employment agencies [14].

Workplace Organization

Workplace organization is another determining factor related to the risks for occupational injury. Because of the triangular employment relationship, employers' obligations are rather vague and poorly defined when it comes to occupational health and safety. Therefore, it is not surprising that following protocols and safety regulations poses difficulties, that knowledge of prevention and management systems is fragmented, and that task communication and coordination mechanisms are weakened [11]. This situation is especially challenging because agency employees work mainly in sectors where the risks for occupational injuries are high, that is, in manufacturing, transportation and warehousing [14,18].

Temporary nature of work, shortcomings in training and lack of information

The agency industry is highly competitive. Agencies are under pressure to meet client requests for employees quickly, and therefore do not always assign the right people to the right jobs [19]. In addition, **the temporary nature of the work accentuates the lack of experience of workers who, in Québec,**

are assigned to three different jobs a year [14]. As a result, in some settings workers with little experience in a sector must temporarily adapt to new environments, new tasks, new tools and machines, new colleagues and new supervisors, among other things. [19]. A study on compensation claims conducted in Victoria (Australia) shows that 18% of agency worker claimants were injured during the first week of placement, and 35% within the first month. By contrast, only 5% of direct-hire workers were injured during the first month of employment [12].

The temporary nature of placements and the grey zone created by the triangular employment relationship in terms of the employer's responsibilities foster a lack of commitment of agencies and their clients to health and safety. Consequently, **little or no explanations are given about tasks, training, supervision or provision of personal protective equipment** [12,19–23].

Moreover, agencies do not supervise working conditions on the premises of client employers [19]. Workplace inspections performed by some agencies before assigning workers are often insufficient: an agency's ability to assess risks is limited and site visits usually brief [19].

As for lack of training, the CNT survey data indicate that 42% of agency workers interviewed had not received training at the beginning of their most recent temporary assignment [14]. When workers had been given training, it was mostly by the client employer and not by the workers' legal employer—the

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¹¹ Agencies or their client employers use a tactic where they create sub-companies—when the primary agency provides workers to a single client—to avoid having to pay overtime wages. The main agency recruits and manages workers, and the sub-agency (or sub-agencies) cover the extra hours. This tactic results in agency workers being unfairly paid for overtime hours worked, even when they worked those hours at a single workplace [17].

MOHAMMED'S Story

“ I have been with an agency for the past several months, after I graduated from university. I went to a placement agency because I had a difficult time finding work. The only way I was able to find work was through an agency. The agent knew I was qualified for other work, but he could only send me to a distribution centre. The agent told me that if I had my own safety equipment I could start work immediately; he then instructed me to fill in a blank form claiming I had received CSST training. Once I arrived at the distribution centre, there was no training on how to handle the pallets or instructions regarding basic safety in the workplace. The warehouse is hot and full of dust, making it hard to breathe but we are not given any masks. I am required to build 14 pallets that are seven feet high or more a day. That means I have to constantly lift large, heavy boxes, at a continuous and rapid pace to make my quota. I move boxes that could be up to 20 kilograms, at a pace of every 20 to 30 seconds continuously for a 7.5-hour shift. It became very dangerous because I would have to lift a box every 30 seconds while electric jiggers were coming, there was no space between the aisles, and the company's concerns were only the quota not our safety. The pressure to fill the quota impacted all of us, creating disorganization on the work-floor, with workers and supervisors paying little attention to health and safety. Those who wanted safety equipment like back guards and masks would have to buy and bring their own. Workers from several different agencies worked in this distribution centre, which on average would have about one accident per week. This has left many workers unable to work beyond one year in this place due to the pressure, high quotas, and lack of training. I do not plan to stay there long and hope to find another job soon. ”

Source: HANLEY, J. (P.I.), EID, P. Recruitment and Placement Agencies: Silent partners in migrant employment. SSHRC Insight Grant.

agency [20]. This situation is repeated elsewhere: in Italy, for instance, a questionnaire administered to over 700 injured agency workers identified three factors likely to explain the higher rate of injuries among them than among other workers:

1. lack of experience with the tasks to be accomplished;
2. insufficient knowledge of workplace facilities; and
3. inadequate training period [6].

To enable workers to fulfil their tasks safely, **the temporary nature of assignments and lack of training for workers should prompt agencies and their clients to**

define clear procedures and communication methods. However, it has been observed that information on health and safety is rarely shared [24].

Qualitative studies carried out in Australia and Québec shed light on the chronic difficulties agency workers encounter when they ask for personal protective equipment, explanations about tasks to accomplish or information about specific risks [12,20]. In most cases, it is unclear who is responsible for following up on such requests; the parties either point fingers at each other or are unaware of their obligations [12,20]. In addition, workers are often ill informed of a client employer's role pertaining to prevention organization,

NEWNESS ON THE JOB Equals Danger

Workers on the job for less than a month have four times as many claims for injuries as those who have held their current jobs for more than a year [29]. This is what emerged from an analysis of claims for work injuries in Ontario. It was also revealed that working in a manual occupation is an aggravating factor. An Ontario study reported that 75% of workers who had started a new job during the 12 months preceding the study indicated that they had not received any training [30].

RECENT IMMIGRANTS ENTERING THE LABOUR MARKET ARE DEALING WITH THREE NEW SITUATIONS: NEW COUNTRY, NEW JOB AND, VERY OFTEN, NEW LANGUAGE.

A recent study conducted in Canada showed that immigrants who have been in the country less than 10 years and have no university degree from a Canadian university are more likely than Canadian-born individuals to be overqualified for their jobs, have work that is more physically demanding and work for small firms [18]. The study also demonstrated that recent immigrants whose mother tongue is neither French nor English or who have a degree from a foreign university are also more likely to have physically demanding jobs than Canadian workers.

YOUNG PEOPLE (15 TO 24) NEWLY ENTERING THE LABOUR MARKET ARE AT HIGHER RISK OF INJURY THAN THEIR PEERS WITH MORE EXPERIENCE.

In Québec, the workplace injury rate among 15- to 24-year olds is **8 times higher** than among all workers [31]. That being said, it is important to remember that exposure to occupational risks varies with age. Lack of experience is one of the factors that can explain this finding [22,32]. However, exposure to risks is greater in socio-occupational categories that require less training and fewer skills, categories which apply to 70% of young workers aged 15 to 24 [22,29].

Source: *Institute for Work and Health 2009*

reporting work hazards or filing a claim following injury [19]. The temporary nature of their assignments can also result in agency workers' being isolated from other groups of workers in a workplace, and place them in situations where they get no social support, which affects their ability to deal with risks in the workplace, among other things [15,25].

Low unionization rate

Temporary agency workers have the lowest unionization rates compared with other types of temporary workers (sea-

sonal, contract, casual) [16]. In Canada, the 2003 Labour Force Survey indicated that the unionization rate among agency workers was only 5% [26]. Yet, unions' communication methods can help workers become more aware of health risks. In a sector as critical as health, this can even have an impact on the quality and safety of patient care [27].

Unfortunately, the very nature of working for an agency makes it very difficult to organize a union. First, client employers can always utilize the servi-

ces of an agency whose workers are not unionized [20]. Then, using an agency limits union activity to varying degrees¹² because these activities are more complex and costly to run within the firm [28]. It can also affect representational activities by reducing the power of unions to negotiate [27,28].

Legal and Regulatory Framework

The protections mandated by labour laws fail workers employed by agencies. Montréal's public health department is concerned about the challenges to regulatory effectiveness related to the application of the *Act respecting occupa-*

ROLANDO'S Story

“ I am recent immigrant from Mexico. When I came to Canada I had no Canadian work experience; I was only able to enter the labour market through a temporary placement agency that concentrated their recruitment efforts on newcomers from Spanish-speaking countries. The agency I went to has no formal office and only communicates by cellphone, giving us sporadic work contracts. The agency told me to bring my own health and safety equipment. When I asked if I would be reimbursed for my boots and other equipment, which costs almost \$100.00, the agency passed off responsibility, and claimed to have requested the equipment from the enterprise that refused to provide it. Because me and my co-workers were desperate for work, we compromised with the agency by bringing our own boots.

I was sent to a beverage distribution warehouse north of Montreal, where me and the other agency workers were asked to unload trailers continuously and quickly, without any training. We felt huge pressure to do this physically demanding work. We're talking about huge trailers with 9 to 12 tons of product. The rhythm of work was almost inhuman; you have to work as a machine because they impose an amount of time that they have already estimated to download one container. For example they say that one trailer has to be downloaded by two men in two hours, which is humanly impossible. This has led to accidents because workers are unable to move about freely and take the time to do the tasks in a safe way.

As a result I injured my back in the container while I was at work. The employer sent me home for the day. When I called the agency to inform them of the incident, the agency simply told me to rest at home, and not file a claim if I wanted to have work again. I did what the agency requested but after discovering my right to CSST benefits, I called both the agency and enterprise where the injury took place. Neither the agency nor enterprise took responsibility, each claiming I did not work there. I was extremely hurt and my image of Canada as a country that respects human rights was shattered. So to get my justice I pursued a CSST claim, despite the lengthy process due to the complexity of navigating who to file the claim against because of the employment arrangement. ”

Source: HANLEY, J. (P.I.), EID, P. Recruitment and Placement Agencies: Silent partners in migrant employment. SSHRC Insight Grant.

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12 Depending on the work context.

tional health and safety¹³ and, to a lesser extent, of the *Act respecting industrial accidents and occupational diseases*.¹⁴ Nonetheless, obstacles arising from triangular employment relationships also affect the application of several other Acts, such as the *Act respecting labour standards* [13,17]. In a context where multiple employers are involved, the difficulty identifying which one is legally responsible for health and safety is yet another obstacle.

Temporary agency workers are generally unaware of their rights [33,34]. When they do know them, they have to deal with many factors linked to temporary employment (job insecurity, low wages, varying work schedules, etc.) that negatively affect their capacity to exercise their rights, out of fear of losing their jobs [34,35]. In addition, the outsourcing cascade that characterizes some agencies (an agency's client being the subcontractor of another firm) creates more confusion, not only among workers (about who their real employer is) but also among organizations whose role is to ensure employers meet their obligations [17].

Various studies reveal that client employers often contract out hazardous tasks and assign them to agency workers rather than to their own employees [21,36]. At the source of this practice is the workers' compensation system that is funded based on an individual employer's record, a system known as "experience rating" [33,36]. Employer premiums vary according to the risk of injuries in their firms; risk is assessed based on prior injuries that have occurred in the firm. For instance, the premium for a construction company where several

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13 *Act respecting occupational health and safety*, L.R.Q., c. S-2.1

14 *Act respecting industrial accidents and occupational diseases*, L.R.Q., c.A-3.001

workers have been injured would be adjusted upward, compared with a similar firm where no workers have suffered injuries. In Québec, injuries suffered by agency workers have no effect on client employers' premiums, even though the latter control working conditions; however, agencies' premiums would be affected. This was also the case in Ontario until very recently [36]. Therefore, it could be in a client employer's interest to outsource hazardous tasks to agency workers. This practice has significant consequences on the implementation of primary prevention strategies and measures to monitor the health of workers exposed to hazardous substances and processes [34,37]. According to Lippel and Laflamme [34], an employer who exposes a worker to a hazard should be the one whose record is affected by the costs of compensation for a work injury under the experience rating rules of the workers' compensation system. When it comes to imposing fines for violation of the *Act respecting occupational health and safety*, the courts have accepted to convict an employer who could have taken measures to prevent an accident. However, the same logic does not apply when determining who is liable for the costs of compensation related to funding the compensation system [37].

Many studies have shown that agency workers face multiple hurdles when filing for workers' compensation. They are especially afraid that exercising their right to compensation will result in the agency not calling them back [11,21,38,39]. In addition, the issue of identifying who is the "true" employer can hinder the injury reporting process and the right to return to work [37]. In Ontario,

agency workers are at greater risk of having their claims denied because of the temporary nature of their jobs, or of being undercompensated if the claim is accepted [33,36]. Finally, temporary reassignment of agency workers and the occupational rehabilitation process create difficult conditions given that a client employer has no obligation to a worker who is partially disabled [37].

Occupational health professionals have noted that current interpretation of the law regarding the employer's obligations as described in the Act respecting occupational health and safety varies among parties. In their opinion, the current interpretation of the Act does not guarantee that the party "responsible" for an occupational injury is the one responsible for its prevention¹⁵ [33,34,36]. Researchers have noted that agency and client employer obligations, such as task-specific training and provision of personal protection equipment, are ignored or denied by those who should be fulfilling them [12,20,21,25]. Moreover, the involvement of several potential "employers", including agencies and their various clients, increases the possibilities of claims being challenged. Studies have demonstrated that claims filed by agency workers are challenged more often than others [1].

Until very recently, temporary employment services activities were not regulated in Québec. To address this shortcoming, Revenu Québec adopted a measure in the spring of 2016 requiring mandatory registration of temporary employment agencies [41]. This new provision is designed to ensure that agencies meet their

fiscal obligations. However, **at this time, there is no legal measure that guarantees registered agencies fulfil their obligations to protect workers, as mandated by labour laws.** According to an Ontario study, some agencies escape their financial responsibilities by shutting down and reopening under a different name when facing fines or surcharges prompted by death or serious injury to a worker [36].

In Québec, a high degree of volatility among agencies is observed in the CNT survey [14]: over 25% (132 of 511) of agencies contacted were no longer at the addresses under which they had registered with one of the sources consulted during the survey¹⁶ [13]. Finally, nothing prevents a client employer from owning an agency and being its only client [42,43]. Teams from the Réseau de santé publique en santé au travail de Montréal have observed such situations in the field [44,45].

Ambiguities around the legal obligations of firms in triangular employment relationships are unlikely to foster client employers' commitment to prevention [12]. This has been repeatedly highlighted in CNESST reports on agency worker fatalities [46–48]. Current prevention models make it difficult for the Réseau de santé publique en santé au travail teams and the CNESST to remedy this situation. On the one hand, these teams' activities are not adapted to the triangular employment relationship. Jurisprudence prior to 2012 questions the possibility of issuing notices of correction to employers other than those of the workers involved in an incident, although two more recent judgements seem to promote greater accountability for

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15 Note: Recent developments in jurisprudence stipulate that obligations entrenched in the AOHS are the responsibility of the employer who is, in practice, supervising or managing the work: *Sobeys Québec v. CSST*, 2012 QCCA 1329 and *Olymel, s.e.c. and Hamel St-Hilaire*, 2013 QCCLP 6838 (Laflamme and Lippel, 2014).

16 Le Registre des entreprises du Québec, l'Association nationale des entreprises en recrutement et placement de personnel et Emploi-Québec.

all employers involved [37]. On the other hand, the temporary presence of agency workers in establishments makes it harder to reach workers through prevention activities and difficult for prevention teams to follow up on their state of health [44,45].

Lastly, **some sectors of economic activity that present significant health risks for workers are not covered by certain prevention mechanisms provided for in the Act respecting occupational**

health and safety, such as the “Other commercial and personal services” sector, which encompasses employment agencies¹⁷ [49]. Mechanisms include prevention programs, health and safety committees, safety representatives, and each establishment’s health program. When combined with the increased risk of occupational injury that agency workers face, the absence of prevention mechanisms in those sectors results in their working conditions being even more precarious.¹⁸

CSST REPORT ON the 2014 Accidental Death of an Agency Worker

DESCRIPTION OF THE INCIDENT

On [...], around 7 p.m., a worker from the TEA* [...] is assigned to [...] located at [...]. The employee moves from one workstation to another to carry out his tasks. While going to a scale where raw materials are weighed, he has to go under a steel safety barrier. He grabs the barrier, which weighs about 200 kg, but it is not fixed to the floor. The barrier swings up and the worker falls down [48].

CNESST FINDINGS

In the case of the injured worker, no information or training had been given to him when he was hired. The representative from the TEA did not even give this employee a tour. Nothing indicates that the worker benefited from any occupational health and safety training regarding the risks in this establishment [...] during the entire time he was assigned there.

Finally, the TEA never obtained a copy of the health and safety policy, prevention program, or training given to new employees by the client employer. Moreover, the TEA never checked to see if the injured worker had been given appropriate training when he was assigned to this position... [48]

*TEA: Temporary employment agency

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17 However, general protection obligations are still applicable.

18 See Chapter 5: Deficiencies in Occupational Injury Prevention.

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4

**QUÉBEC STATISTICS
ON THE HEALTH OF
AGENCY WORKERS**

QUÉBEC STATISTICS ON THE HEALTH OF AGENCY WORKERS

This chapter presents statistics on occupational injuries of individuals working for agencies whose offices are located in the Greater Montréal area, that is, the island of Montréal and surrounding areas (Laval, Laurentides, Lanaudière and Montérégie).

Because the regions of Greater Montréal are geographically close and economically interdependent, a profile must be based on these boundaries. Many individuals who work on the island of Montréal live in the outskirts; the inverse also occurs, but to a lesser degree. As for agency workers specifically, although the agencies that hire them are on the island of Montréal or its periphery, workers can be assigned to client employers located anywhere. In CNESST data banks, the injuries reported on the island of Montréal

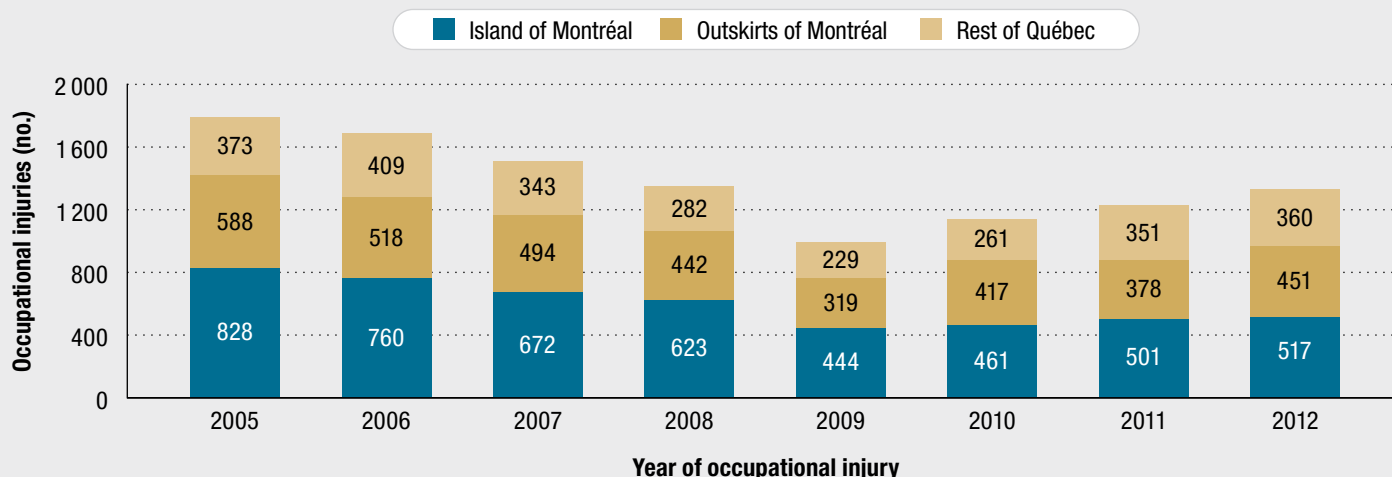
refer to workers employed by temporary agencies actually located on the island. The available data does not indicate where injuries specifically occurred or the names of the agencies' client employers.

Québec Statistics on Occupational Injuries

Each year in Québec, the CNESST accepts an average of 1 378 claims for occupational injuries affecting agency workers. **Most are concentrated in the Greater Montréal area, with 1 052 annually.** Moreover, close to six in ten injuries (or 57%) affect employees of agencies located on the island of Montréal (Figure 5).

Injuries among agency workers in Greater Montréal are overrepresented compared with injuries among workers

FIGURE 5. NUMBER OF OCCUPATIONAL INJURIES AFFECTING AGENCY WORKERS ACCEPTED BY THE CNESST, BY YEAR OF INJURY, GREATER MONTRÉAL AND REST OF QUÉBEC, 2005–2012



Source: Boucher and Duguay, 2016

TABLE II RELATIVE DISTRIBUTION (%) OF OCCUPATIONAL INJURIES ACCEPTED BY THE CNESST (AGENCIES VS. OTHER SECTORS), GREATER MONTRÉAL AND REST OF QUÉBEC, 2005-2012

	INJURIES		DIFFERENCE
	Agency workers	Other workers	
Greater Montréal	76%	56%	+20%
Rest of the province	24%	44%	-20%
Injuries total (100%)	11 021	812 965	

Source: Boucher and Duguay, 2016

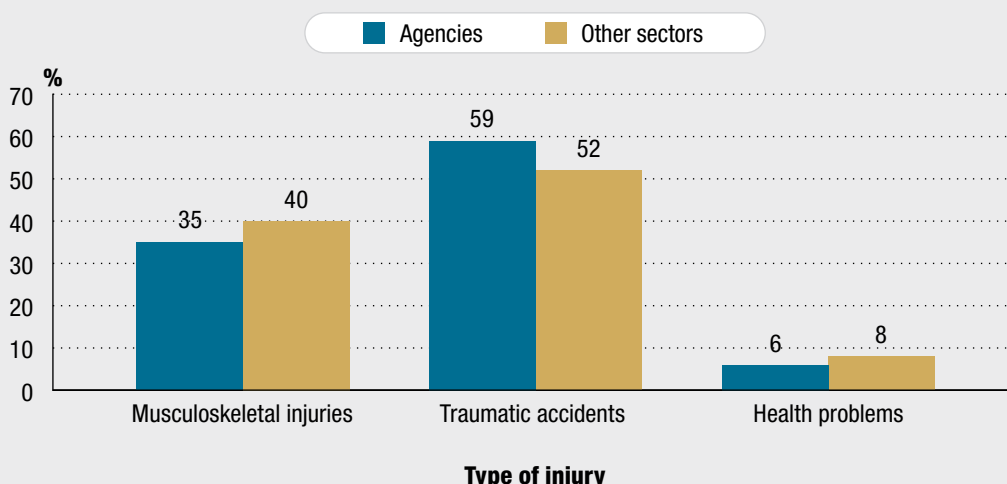
in other sectors of activity (Table II). In Québec, three out of four injuries among agency workers are in individuals placed by agencies located in Greater Montréal.

Traumatic injuries are not only the most common type of injury among all workers, but they are proportionately higher among agency workers (Figure 6). Health and musculoskeletal problems in agency workers are underrepresented compared with workers in other sectors, which is consistent with the scientific literature that spotlights underreporting of these issues (see preceding chapters).

Agency workers account for a higher proportion of compensated lost time injuries, compared with injuries sustained by workers in other sectors (Figure 7). This is especially true for musculoskeletal injuries and traumatic accidents, which suggests that agency workers tend to underreport less serious injuries.

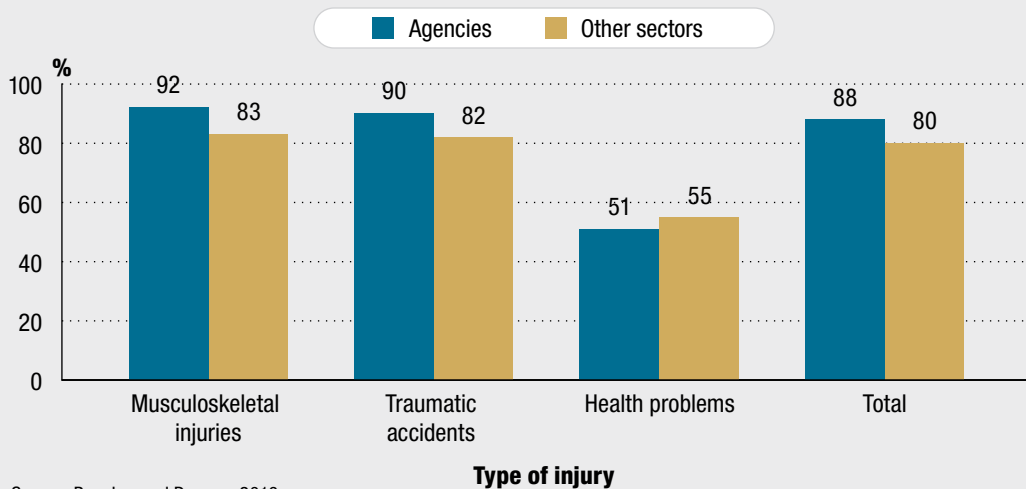
Nearly nine out of ten injuries in agency workers are lost time injuries, while for workers from other sectors it is eight out of ten. **When compared with injuries among other workers, compensated injuries among agency workers**

FIGURE 6. RELATIVE DISTRIBUTION (%) OF OCCUPATIONAL INJURIES ACCEPTED BY THE CNESST, BY TYPE OF INJURY (AGENCIES VS. OTHER SECTORS), GREATER MONTRÉAL, 2005-2012



Source: Boucher and Duguay, 2016

FIGURE 7. RELATIVE DISTRIBUTION (%) OF COMPENSATED LOST TIME OCCUPATIONAL INJURIES, BY TYPE OF INJURY (AGENCIES VS. OTHER SECTORS), GREATER MONTRÉAL, 2005–2012



Source: Boucher and Duguay, 2016

that do not result in lost time at work are underrepresented (Figure 8). The inverse is true for longer compensation periods, where injuries suffered by agency workers are proportionately overrepresented. Again, these data are consistent with the findings of several researchers [1–4]: agency employees often abstain from reporting accidents because they fear it will negatively affect their chances for future employment.

Duration of absence from work is a good indicator of injury severity, at least as regards musculoskeletal problems.¹ However, two other indicators should also be considered: average duration and median duration of compensation.² The usual median number of days lost due to injury is 14, which corresponds to the maximum number of days an employer must pay (up to 90%) a worker’s salary following

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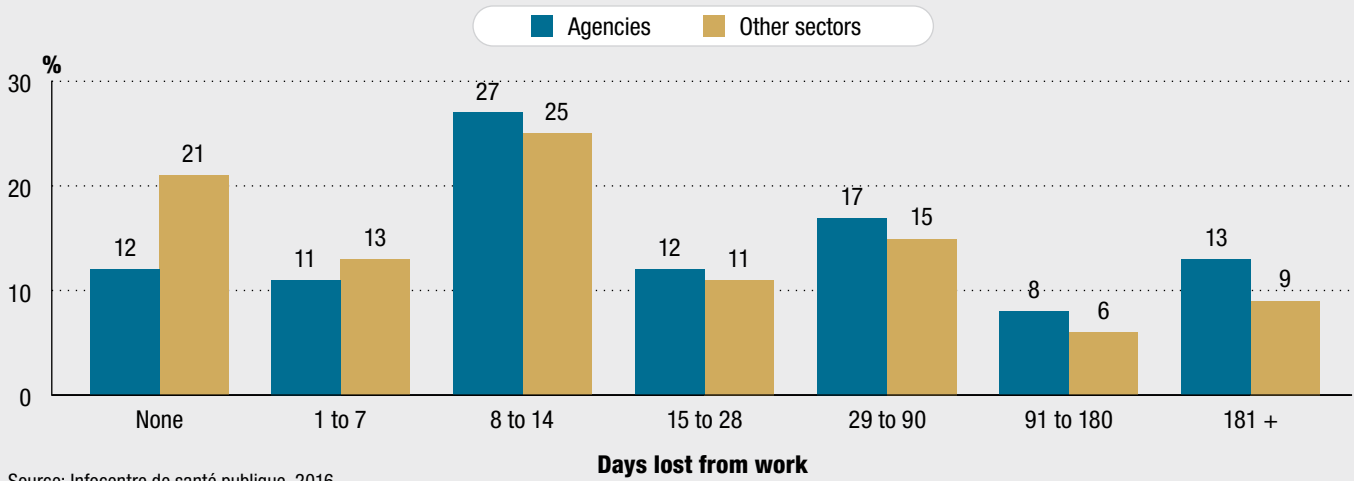
- 1 Some occupational diseases caused by long-term exposures, such as cancer or deafness, are often reported once the worker is no longer employed. Therefore, no days are compensated despite the seriousness of the injury or presence of permanent physical or psychological injury.
- 2 The first is more sensitive to extreme values, whereas the second is very stable and only varies when the distribution of seriousness of injury is higher, overall. Note: The indicators calculated exclude cases with no compensated lost time.

injury. Starting on day 15, the CNESST then pays the worker’s salary for the entire disability period.

Agency workers’ injuries are generally more serious and result in more days lost from work than injuries suffered by other workers. In the case of employees of agencies located on the island of Montréal, durations are longer than in Greater Montréal and differences more pronounced between agency workers and other employees, regardless of type of injury (Figure 9).

Agency workers suffer from more musculoskeletal injuries than employees in other sectors, and, on average, those injuries result in longer absences from work. There is a 19-day difference in average duration of absence between agency workers and workers from other sectors (136 days versus 117 in Greater

FIGURE 8 RELATIVE DISTRIBUTION (%) OF OCCUPATIONAL INJURIES ACCEPTED BY THE CNESST, BY DAYS LOST FROM WORK (AGENCIES VS. OTHER SECTORS), GREATER MONTRÉAL, 2005–2012



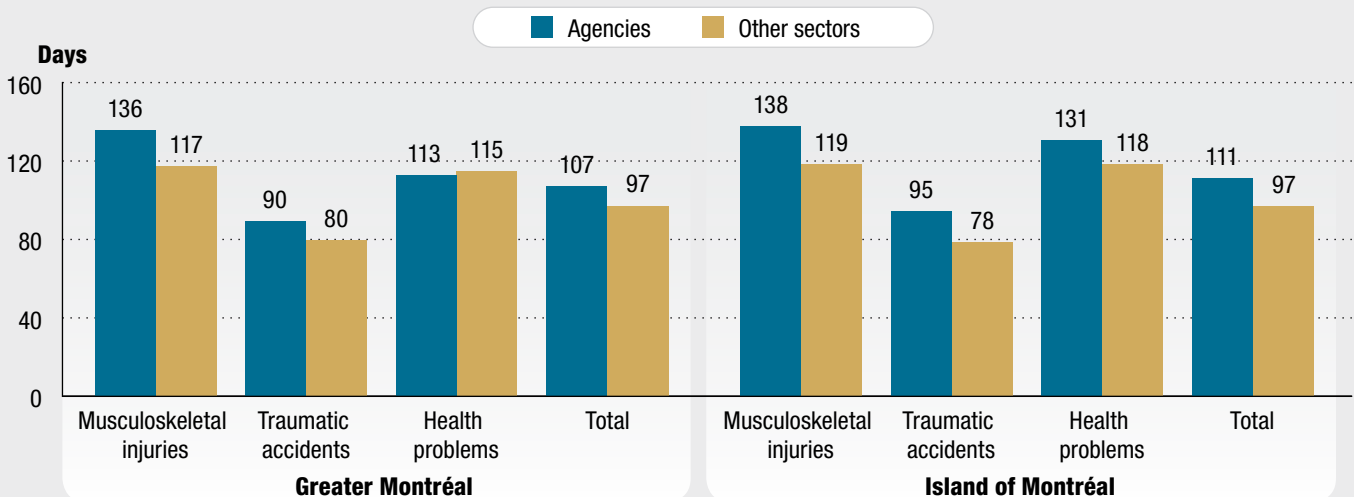
Montréal). The difference in median duration confirms this finding (24 days for agency employees versus 19 for workers from other sectors).

Traumatic accidents affecting agency workers are also more serious than those involving workers from other sectors. Those accidents result in an average of 10 more days of absence,

compared with other sectors (90 versus 80 days). Median durations of absence from work confirm the greater severity of injury (16 days for agency workers compared with 14 for workers in other sectors).

It is worthwhile to note that **statistics on injuries among workers from agencies on the island of Montréal show**

FIGURE 9. AVERAGE COMPENSATION PERIOD (DAYS) FOR OCCUPATIONAL INJURIES ACCEPTED BY THE CNESST WITH COMPENSATED LOST TIME, BY TYPE OF INJURY (AGENCIES VS. OTHER SECTORS), GREATER MONTRÉAL, 2005–2012



Source: Boucher and Duguay, 2016

absences are longer than in Greater Montréal. In addition, differences in duration of absence between agency and other workers are even more pronounced than in the Greater Montréal area. The median of 20 days for agency workers compared with 16 for employees in other sectors confirms this trend; the same is true for musculoskeletal disorders (median of 27 days for agency workers versus 20 for other sectors) and traumatic accidents (median of 18 days for agency workers and 14 for other sectors).

Permanent physical or mental impairment is another important indicator to consider. It refers to injuries that have long-lasting or permanent consequences for workers. Figure 10 shows that accidents among agency workers are clearly overrepresented, while health problems are greatly underrepresented proportionately to injuries, compared with other sectors of economic activity. It is especially difficult to establish a professional history that could prove a health problem when assignments are both numerous and temporary.

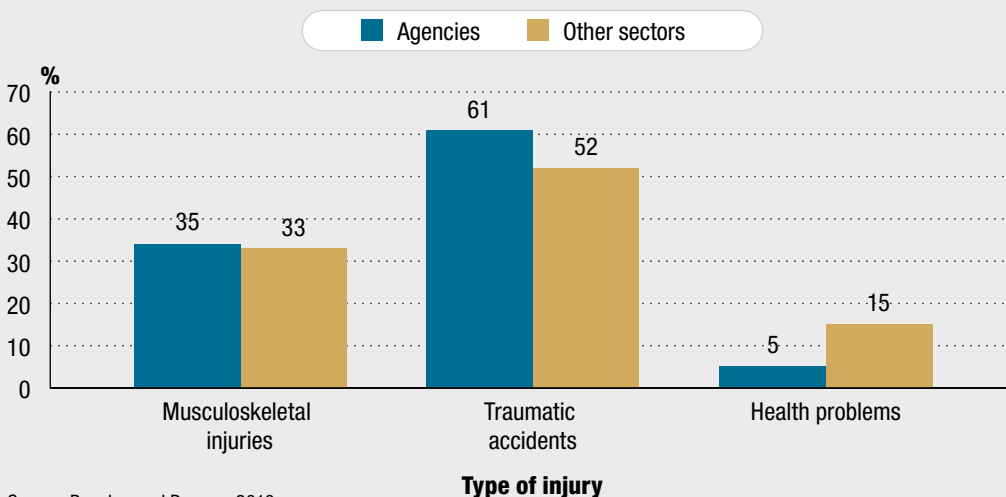
Some sociodemographic characteristics help better describe the profile of agency workers affected by occupational injuries. CNESST files contain data on sex, age and occupation.

Distribution of injuries by age groups demonstrates that, **in agencies, the proportion of injuries among young workers is higher than in other sectors.** Indeed, they are overrepresented in all age groups under 40, especially in the under 25 group (Figure 11).

Injuries sustained by agency workers are overrepresented in two categories: “Employees of transport companies” and “Employees in processing and manufacturing”. Conversely, they are slightly underrepresented in the categories “Medical staff, health technicians and related workers” and “Administrative staff and related workers”. The percentage of injuries in the “Employees in sales and services” category is quite low (Figure 12).

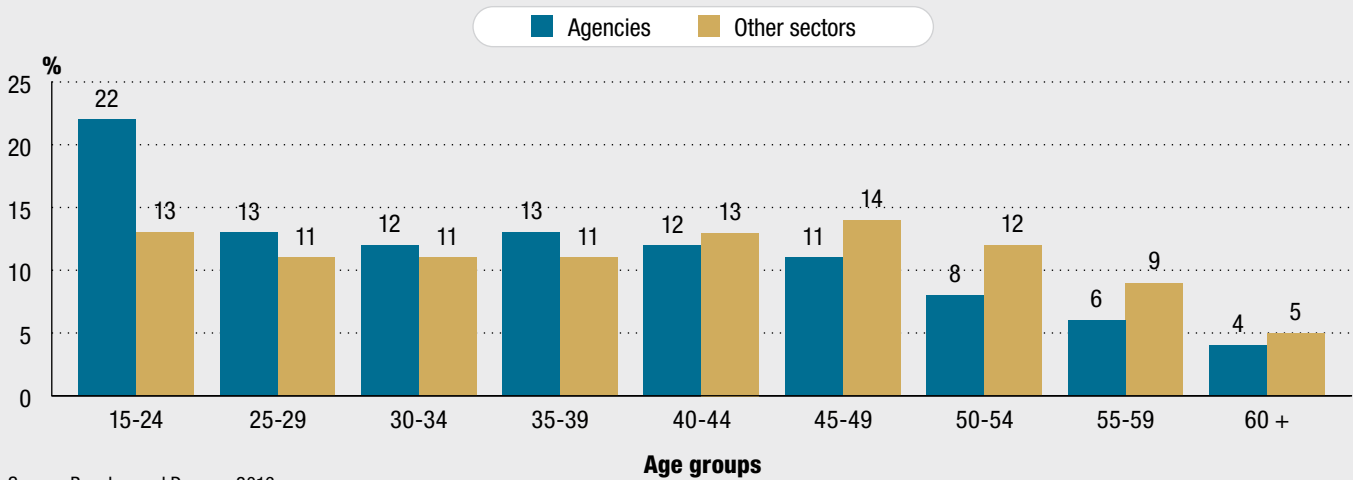
All types of injuries are overrepresented for agency workers in the “Employees of transport companies” category.

FIGURE 10. RELATIVE DISTRIBUTION (%) OF OCCUPATIONAL INJURIES ACCEPTED BY THE CNESST AND CAUSING PERMANENT PHYSICAL OR PSYCHOLOGICAL INJURY, BY TYPE OF INJURY (AGENCIES VS. OTHER SECTORS), GREATER MONTRÉAL, 2005–2012



Source: Boucher and Duguay, 2016

FIGURE 11. RELATIVE DISTRIBUTION (%) OF OCCUPATIONAL INJURIES ACCEPTED BY THE CNESST, BY AGE GROUP (AGENCIES VS. OTHER SECTORS), GREATER MONTRÉAL, 2005–2012



Source: Boucher and Duguay, 2016

Musculoskeletal disorders are 2.8 times more common, accidents 2.6 times and health problems 1.5 times.

Average duration of compensation is longer for agency workers than for those in other sectors (Figure 13). Median duration for injuries confirms this gap (23 days for agency workers versus 20 for those in other sectors). The difference is very pronounced in cases involving health problems (50 versus 25.5) and musculoskeletal disorders (25.5 versus 19, for workers in other sectors). Severity of injury between agency versus other workers differs the most in the “Medical staff, health technicians and related workers” category, followed by the “Employees in processing and manufacturing” category (Figure 13).

Of note, women make up a large part of the “Medical staff, health technicians and related workers” category. In this context, it is not surprising that the occupations most often reported are “Orderly” and “Nurse’s aide”.

In the “Employees in processing and manufacturing” category, injuries to agency workers (Figure 12) are overrepresented compared with injuries to other

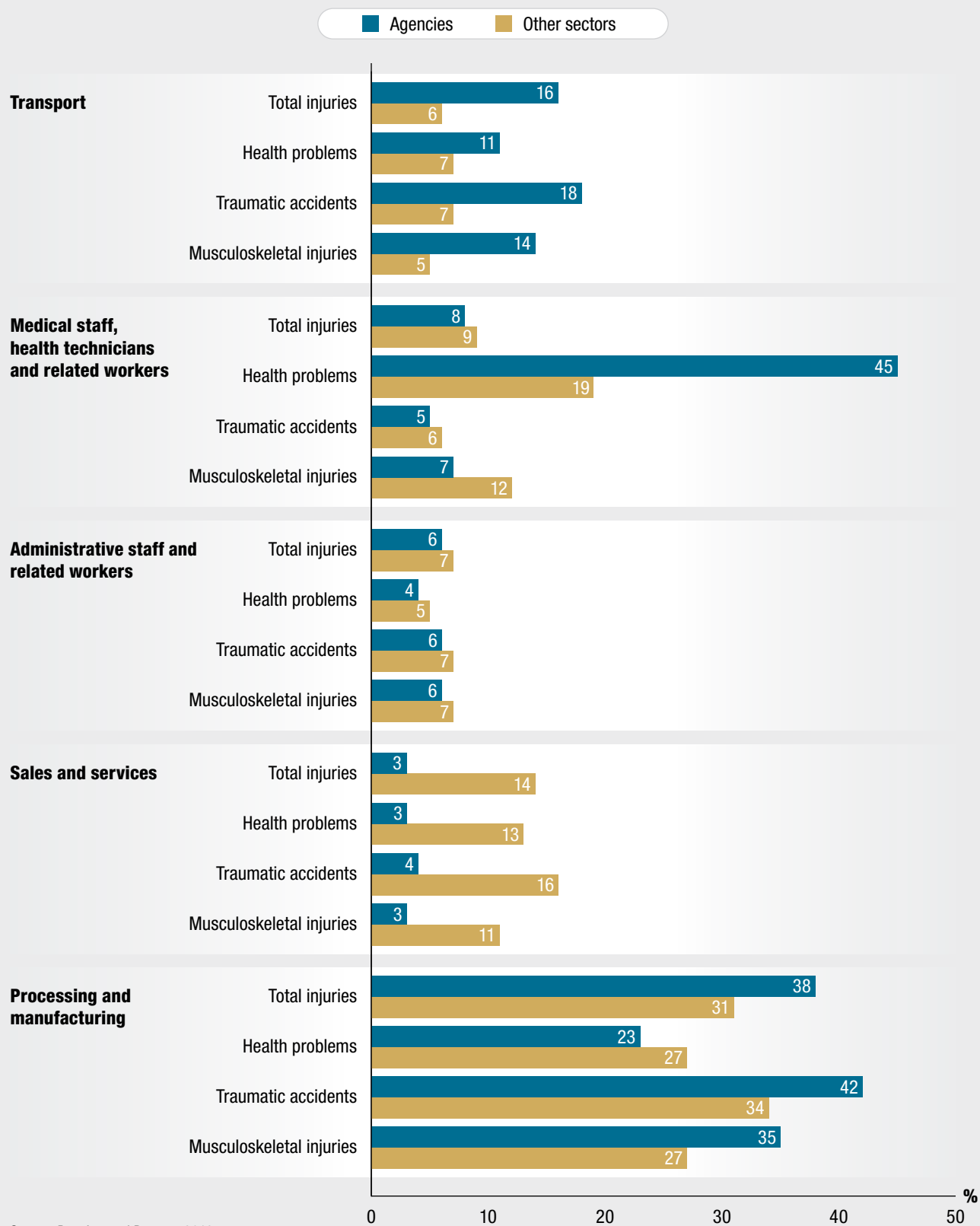
workers (38% versus 31%); men and young people are considerably overrepresented. Occupations in the processing and manufacturing sector (“Labourers” and “Handlers”) requiring few qualifications are the most frequently reported.

Eleven claims for occupational fatalities involving agency workers that occurred between 2005 and 2012 in Québec were accepted by the CNESST. Among those deaths, 8 were workers from the island of Montréal, 1 a worker from the outskirts of the city, and 2 from elsewhere in the province [5].

Data Limitations and Underreporting

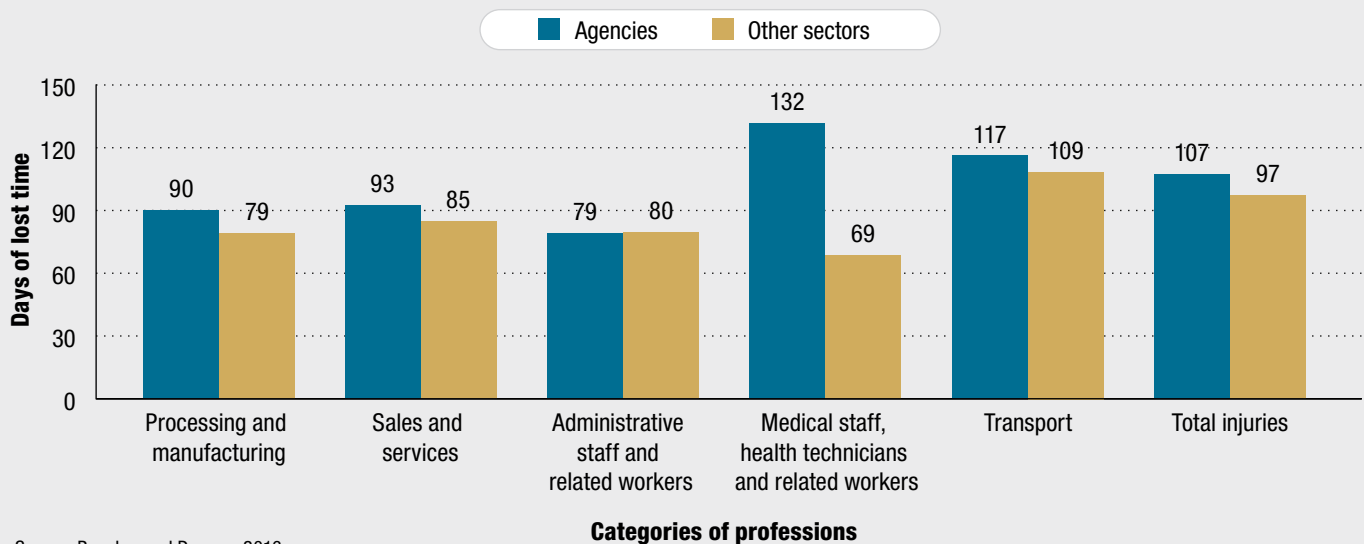
The complexity of the triangular employment relationship is a limitation to collecting vital information. Indeed, CNESST files do not include data on specific site of accident, duration of injured worker’s contract, time of day or shift when the accident occurred, and many other important data that could explain how an injury occurred and what created obstacles to prevention activities. In Australia and

FIGURE 12. RELATIVE DISTRIBUTION (%) OF OCCUPATIONAL INJURIES ACCEPTED BY THE CNESST, BY TYPE OF PROFESSION (AGENCIES VS. OTHER SECTORS), GREATER MONTRÉAL, 2005–2012



Source: Boucher and Duguay, 2016

FIGURE 13. AVERAGE COMPENSATION PERIOD FOR OCCUPATIONAL INJURIES ACCEPTED BY THE CNESST WITH COMPENSATED LOST TIME, BY TYPE OF PROFESSION (AGENCIES VS. OTHER SECTORS), GREATER MONTRÉAL, 2005–2012



Source: Boucher and Duguay, 2016

Ontario, the situation is quite different since those data are collected, proving that it is feasible to collect this essential information [4,6].

It is impossible to calculate injury frequency or incidence rates, which would allow accurate qualification of risk. To do so, it would have to be possible to estimate the number of workers, data usually obtained through Canada's long-form census. However, even that figure is not reliable when it comes to agency workers. To the question "For whom have you worked?", many people tend to give the name of the client employer rather than of the agency.

Underreporting of occupational injuries is the greatest obstacle to thorough evaluation of injuries incurred by agency workers. Only the EQCOTESST determined that, in Québec, a third of victims of lost time traumatic work accidents did not file claims with the CNESST [7]. The reasons most often given were lack of information and severity of the injury. Administrative or relational explanations

were also cited. As regards musculoskeletal disorders, 8 out of 10 workers did not file claims with the CNESST [8,9].

As noted earlier, many studies have revealed that temporary or on-call workers who report occupational injuries risk not being called back to work or losing the opportunity of getting a permanent job [10–13]. Fearing that the employer could retaliate, workers in precarious jobs opt for different strategies. A study of 786 American and 563 Italian workers established that workers in the most precarious situations are rather inclined not to report their injuries because they are afraid of jeopardizing future job possibilities [14]. In Québec, a study of agency nurses revealed that they are less likely to report workplace accidents than nurses with stable positions; agency nurses prefer to make themselves less available or suspend their availability status rather than report an injury [15].

Precariously employed workers such as agency workers are more likely to be underrepresented in workers compensa-

tion statistics [16]. In addition to fearing for their jobs, agency workers are at risk of seeing their compensation claims rejected due to the temporary nature of their positions. In fact, when a worker has worked, often intermittently, in numerous jobs, it is very difficult to piece together a professional history that could shed light on and characterize the various health hazards he or she has been exposed to. Because of the intermediaries between a client employer and a worker who has suffered a workplace injury, it is also complicated to reconstruct the facts for individuals employed by a subcontractor who, in turn, offers its services to other firms [17].

The triangular employment relationship can be especially problematic in cases of health problems or musculoskeletal disorders because these are less likely to be recognized as compensable than are accidents that have caused visible injuries and occurred on specific dates [18]. It is interesting to note that claims for occupational diseases filed with the CNESST are rejected twice as often as claims for accidents. For example, in 2014, 48% of claims for occupational diseases were approved, compared with 84% for accidents [19].

Finally, the groups most likely to work for agencies are more likely to be underrepresented in workers compensation claims. Indeed, women who suffer workplace injuries are more likely not to report them, and have more difficulty having their claims accepted [16]. The same applies to immigrant workers, who have to deal with a number of obstacles before having their occupational injuries accepted [20,21]. Occupational health, for these two groups, is unlikely to improve since prevention priorities are based on compensation statistics.

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3 Based on data from CNESST administrative files and Statistics Canada. Surveys and censuses.

Costs: The Inevitable Question

The costs engendered by occupational injuries are very high. They have an impact on injured or sick workers as well as on their employers and the community [22]. Included in the costs are medical expenses, as well as salary costs (unproductive salary paid to the injured worker on the day of the accident), administrative costs (recruitment and training), indemnities for bodily injury and loss of enjoyment of life, funeral costs, and loss of productivity (value of the work no longer performed by the injured worker; inability to perform household work) [23]. In Québec, a study carried out by IRSST estimated that the costs of occupational injuries reported to and accepted by the CNESST were approximately \$4.62 billion a year on average for the period 2005-2007, and that the average cost of an occupational injury was \$38,355³ [22]. Table III shows that these costs rose to \$53,509 for the period 2010-2012.

For workers on the Island of Montréal, the average cost of occupational injuries suffered by agency employees is higher than of injuries affecting other workers (Table III); however, the inverse is true for the rest of the province.

The high underreporting rate of occupational injuries sustained by agency workers masks the real costs from employers. Underreporting results in the public health care system having to cover the costs of injuries and illnesses, and when injured workers are incapable of working, social assistance programs foot the bill [24]. This does not provide incentives for additional investment in

TABLE III AVERAGE COSTS (2011 CONSTANT \$) OF OCCUPATIONAL INJURIES ACCEPTED BY THE CNESST, BY REGION WHERE ESTABLISHMENTS ARE LOCATED, QUÉBEC, 2010-2012

	Island of Montréal	Greater Montréal	Total for Québec
Agencies	\$46 584	\$42 866	\$42 417
Other sectors	\$41 600	\$45 029	\$53 662
Total	\$41 705	\$44 990	\$53 509

Source: Boucher and Duguay, 2016

preventive health and safety measures, since such investment is driven by occupational injury and illness statistics [24].

Possible Solutions

Based on our observations of available data, little is known about the temporary employment agency sector in Québec (number and size of agencies, client employers, training practices, etc.). Even less is known about the workers themselves, their numbers and the real risks to which they are exposed.

The director of public health’s surveillance mandate, as defined in the *Public Health Act* (PHA S-2.2, Chapter 1.4) and in the *Act respecting occupational health and safety* (AOHS c.S-2.1 s. 127), for the occupational health of workers, needs to enable him to measure how social inequalities in health are evolving within Québec’s population. The World Health Organization has highlighted the utmost importance of surveillance to counter those inequalities, noting the need to “establish national and global health equity surveillance systems with routine collection of data” to inform program and policy development designed to address social inequalities in health [25]. Precar-

ious employment—a social determinant of health—must be included in the director’s surveillance mandate so that the related data can be used to shape preventive interventions and practices [26].

Population surveys⁴ and the Canadian census do not clearly identify agency workers. As mentioned earlier, when asked to name their employer, a significant percentage of respondents tend to identify an agency’s client employer and not the agency itself, which makes it impossible to compile the number of agency workers. Therefore, it is necessary to **develop a framework to define or modify the questions asked when collecting data.**

Data that can truly guide prevention strategies for groups at risk should be included in CNESST administrative files. This data should specify the employment relationship, to identify agency workers and subcontractors, immigration status, income and use of French or English. There are significant limits in the currently available data on determinants of accidents—time of day, location, duration of the worker’s contract, seniority in the firm and experience on the worksite. Consequently, it is difficult to target actions that could have substantial impacts on workers’ health.

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4 For example, Canadian Community Health Survey (CCHS), Québec Population Health Survey (EQSP) and Québec Survey on Working and Employment and OHS Conditions (EQCOTESST).

The public occupational health network must develop a strategy to collect data. The objective is to document the presence of agency and other workers in precarious jobs and, during interventions, collect additional information on the workplace visited (size of the firm, presence of one or more subcontractors, etc.) and on the workers themselves (language at work, employment relationship, sex, age).

The Montréal public health department's occupational health sector is currently reviewing its data collection practices. Its goal is to characterize work settings to determine a useful and relevant process for prevention in establishments visited as part of its regular activities.

The public health department also intends to further develop its surveillance strategy so it can identify firms who use temporary employment agencies, determine how many immigrant workers there are, and identify determinants of occupational health. Public health will therefore be better able to target its actions, adapt its preventive practices to workplace characteristics, and fulfill its responsibility to “transmit to the Commission statistical data on the workers' state of health” (s. 127, para. 8, AOHS).

Another possible solution is to rally stakeholders in the field of surveillance to develop a framework. The framework, with which reliable measurements on precarious jobs could be obtained, could be used to determine questions on the long-form census, as well as to enhance health surveys and administrative data. The project could be carried out by a working group composed of surveillance experts and government agencies such as Institut de la statis-

tique du Québec, Institut national de santé publique du Québec, IRSST and Statistics Canada.

Given the growth in non-standard employment and significant gaps in knowledge, **providing researchers access to the most recent surveillance data** while respecting the usual rules of ethics and confidentiality should be considered a preferred practice. However, the need to broaden knowledge goes far beyond the need for surveillance. While legal processes have been the subject of very interesting studies, a number of questions remain: what is the true effectiveness of legal protections; what are the structural determinants of the phenomena and their impacts in different areas of the physical and mental health of workers and their families; what are the best interventions to implement and what are their outcomes on population health.

Research funding agencies—Canadian Institutes of Health Research, Social Sciences and Humanities Research Council of Canada, Fonds de recherche du Québec en santé, and IRSST—**should also be called upon** to allocate resources to address the issue of non-standard employment, particularly the outcomes of using temporary employment agencies.

In addition, **the Fonds de recherche du Québec (FRQ-Santé et FRQ-Société et Culture) should be encouraged to take action** in partnership with Ministère de la Santé et des Services sociaux, Ministère du Travail, l'Emploi et de la Solidarité sociale, IRSST and Ministère de l'Immigration, de la Diversité et de l'Inclusion. For instance, the Fonds de recherche du Québec en santé could issue a call for proposals to conduct an evaluation of the health impacts of precarious employment related to agencies.

Finally, given the dearth of information on agencies, it would certainly be relevant to conduct a new study, in partnership with organizations such as CNESST, INSPQ, public health departments, IRSST and university researchers, that would explore the world of agencies and the people working for them, and characterize their health and safety risks as accurately as possible.

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**DEFICIENCIES
IN OCCUPATIONAL INJURY
PREVENTION**

DEFICIENCIES IN OCCUPATIONAL INJURY PREVENTION

The Public Occupational Health Network's Preventive Interventions

The *Act respecting occupational health and safety* states that dangers to the health and safety of workers must be eliminated at the source. The role of professionals from the Réseau de santé publique en santé au travail is to watch over the health of workers in Québec by supporting workplaces to ensure they can fulfill their obligations relating to the prevention of occupational injuries¹.

The network teams carry out interventions within the context of three main programs: each establishment's health program,² the reportable disease program (MADO), and the "For a Safe Maternity Experience" program.

Specific Health Program for an Establishment

The law outlines four prevention mechanisms for workplaces: prevention program, health and safety committee, safety representative, and specific health program for an establishment. As set out in section 113, occupational health teams from regional public health departments are tasked with developing health programs

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- 1 Information pamphlet: *Des professionnels qui font équipe avec vous! Pour des milieux de travail en santé*, Réseau de santé publique en santé au travail, avril 2014.
- 2 Given that each enterprise can have more than one establishment, whether or not it is the client of a temporary employment agency.
- 3 Information pamphlet: *Des professionnels qui font équipe avec vous! Pour des milieux de travail en santé*, Réseau de santé publique en santé au travail, avril 2014.

adapted to the risks in each establishment and overseeing their implementation. This applies mostly, but not exclusively, to establishments in the following categories targeted by the CNESST:

Group 1: construction and public works; chemical and chemical products industries; forestry and sawmills; mines, quarries and oil wells; metal fabricating industries.

Group 2: wood industry (excluding sawmills); rubber and plastics products industries; transportation equipment industries; primary metal industries; non-metallic mineral products industries.

Group 3: government service industries; food and beverage industries; furniture and fixture industries; paper and allied products industries; transportation and storage industries.

Note that these groups cover only 25% of the workforce in Québec (and 15% of women). The groups prioritized should be changing in the near future, which will help to better protect agency workers.

Each establishment's program is developed with the employer and a worker representative or the occupational health and safety committee. It includes the following components:³

1. Identification and evaluation of health risks.
2. Information on workplace risks, their effects on health, preventive and control measures.
3. Surveillance of the health status of the workers, which consists in screening or monitoring for possible impacts on their health, and referring them to specialists, as needed.
4. Assistance in identifying solutions by supporting workplaces in the areas of risk management and the search for solutions.
5. Support in organizing emergency and standard first aid services by providing advice to employers to ensure they comply with the minimum standards set out in the regulation.

All workers in an establishment, including those employed by an agency or a subcontractor, are targeted by this program (LRQ., c. S-2.1, sections 51 and 51.1).

Reportable Disease Program

In accordance with the *Public Health Act*, physicians and laboratories must report to the director of public health some types of diseases, infections and intoxications that are linked to workplace exposure, regardless of the economic sector where these occur. They must also report situations that present risks to the health of groups of workers. When a disease is reported and upon request of the director,⁴ occupational health teams conduct an epidemiological investigation, and provide monitoring and follow-up in the establishment to ensure that biological, chemical and physical risks are eliminated or controlled to protect the health of exposed workers.

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⁴ Information pamphlet: *Des professionnels qui font équipe avec vous! Pour des milieux de travail en santé*, Réseau de santé publique en santé au travail, avril 2014.

“For a Safe Maternity Experience” program

If a pregnant or breastfeeding worker’s attending physician suspects a hazard to the woman, her foetus or her breastfed child, he or she must inform the occupational health team. It is the team’s responsibility to confirm or refute the presence of the hazard after evaluating the woman’s workstation and tasks. Based on the team physician’s opinion, the woman’s doctor can recommend changes to the workstation, moving her to a danger-free workstation, or preventive withdrawal. The evaluation and recommendations are sent to the CNESST. This program, like the reportable disease program, is not restricted to the top three priority groups.

Reality in the Field

Despite a clearly defined mandate, occupational health and safety teams face many challenges in the field. Several factors create obstacles to applying preventive measures in establishments.

Consultations carried out in 2015 with individuals in charge of the three programs as well as a series of 10 interviews conducted the same year with ergonomists, nurses and physicians from Montréal’s occupational health network helped define those obstacles [1]. They can be divided into two categories: interventions in the establishment, and the realities of workers in precarious jobs.

Obstacles to Interventions in Establishments

The Montréal experience confirms the obstacles reported in the scientific literature on preventive interventions with agency workers. It specifically shows that, in their

current form, establishment-based preventive models are not always adapted to agency workers. Several reasons can explain this situation.

First, agency workers, who move from one client employer to another, are not easy to reach during workplace interventions. The probability is low, and varies from one establishment to another, that these workers be in a given workplace during information sessions or when risks are being characterized and workstations evaluated.

Second, the temporary nature of the work of agency workers, their exposure to varying risks, and fluctuations in exposure levels are obstacles to obtaining thorough employment histories that are representative of exposure risks and duration.

Third, because of the triangular employment relationship, injury prevention responsibilities in establishments where agency workers are assigned are not clearly defined. During visits, occupational health professionals often note the presence of agency workers, even though the firms assert that they do not use the services of temporary employment agencies. Establishment representatives sometimes do not reveal the presence of temporary workers because they are not asked the question, perceive it as unimportant, or think they are not responsible for those workers. Occupational health teams often do not have the tools to document the presence of temporary workers in client employer firms.

Lastly, given that agency workers may not be on site during occupational health team visits, it is difficult to know if they have been given training for the type of work they do at their workstations, or if they have been informed about work-

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5 According to CNESST classification.

related risks and the proper use of personal protective equipment. As noted earlier, client employers often presume they can rely on the agencies to fulfill those responsibilities.

As a general rule, occupational health teams cannot check with agencies directly to find out if their workers have been given training and information on preventive measures, because agencies are not included in a priority economic activity sector (even though their workers are assigned to establishments in these sectors). Non-priority groups such as the “Other commercial and personal services” sector, which includes agencies,⁵ are not required to implement the four prevention mechanisms contained in the Act. Nonetheless, non-priority groups do have general prevention obligations, including those outlined in section 51, paragraphs 3 and 5 of the AOHS (see Appendix 4). They are also targeted by the Reportable Disease and For a Safe Maternity Experience programs.

Realities of Workers in Precarious Situations

Preventive interventions are not always adapted to the realities of workers in precarious situations, particularly agency workers. This shortcoming often results in their being excluded from interventions, for the reasons cited below.

Agency workers are often hired to work irregular schedules (evening, night or weekend shifts). Although occupational health teams can sometimes adapt their interventions to those schedules, it is still difficult to reach those workers.

Also, some pregnant or breastfeeding agency workers choose not to exercise their right to preventive withdrawal or to be

assigned to non-hazardous jobs (possible because of the For a Safe Maternity Experience program), out of fear that the agency will not offer them further assignments [1].

As stated earlier, agency workers rarely file complaints with the CNESST and hesitate reporting hazardous working conditions because they are afraid of reprisals on the part of the client employer or agency [2,3]. In addition, immigrant and allophone workers, who make up a large number of agency workers, sometimes have difficulty understanding instructions regarding prevention because of language barriers and limited knowledge of their rights [4].

Finally, many client employers hesitate releasing agency workers so they can take part in information or screening sessions, since they hired them specifically to meet production needs, often with short-term deadlines [1,5].

Possible Solutions

The Réseau's strategic plan [6] defines the mission, vision and values that guide its actions and determine its interventions. Possible solutions have been developed based on the network's vision and values favouring the development of a culture of workplace health and safety.

For Occupational Health Teams

Preventive interventions should target all workers, regardless of employment relationship [7]. They must be structured so that workers who are hardest to reach—agency workers, for instance—can benefit from them. This requires innovative mechanisms to ensure that hard-to-reach workers are included. It is believed that collaborative actions with partners in prevention could improve the effectiveness of workplace preventive interventions and contribute to setting

new standards for prevention adapted to the realities of workers in precarious situations.

More concretely, the following solutions should be considered:

The Réseau must adopt clear and unambiguous guidelines to include agency workers and other precarious employed workers in prevention activities [7]. To do so, a provincial intervention policy targeting agency workers is needed. The goal of the policy should be to give occupational health professionals the skills to inform, raise awareness and provide tools to workplaces to ensure agency workers are better cared for; representatives of client employers would then be reminded of their prevention obligations, whether or not their establishments are in a priority sector. Section 51 of the *Act respecting occupational health and safety* states that those obligations target all workers on site, whether or not they are permanent employees of the establishment

We need to ensure that **provincial policy includes a formal procedure to follow so that interpreters are systematically used** during information sessions held in establishments where workers speak neither French nor English.

In addition, **legislation must ensure systematic translation** of intervention tools into English or other languages so that a greater number of workers understand and use the information.

Professionals from the Réseau must have the tools needed to pass on appropriate information to establishment representatives about the latter's obligations regarding prevention of occupational injuries among agency workers. To achieve this goal, it is important to expand knowledge on the realities of these workers and possible intervention methods.

As noted earlier, to improve data collection and the visibility of agency workers, **it is necessary to be clear about the type of data to collect during visits to establishments so that those workers and the jobs they are assigned to are correctly identified.** Preventive interventions could then be better adapted to their realities. The occupational health information system (SISAT) should be modified accordingly.

Each establishment's health program should **have a section that explicitly describes obligations toward agency workers, their characteristics within the establishment and actions to take to make sure they are integrated into health program activities.** To reach those workers, preventive services, such as screening for diseases like silicosis or asbestosis, or for occupational hearing loss, could be provided at varying times during work schedules. Trainers could also be trained from within the agencies or the client employers. It is important to verify on a regular basis if agency workers are well informed, by creating links with agencies hiring those employees.

Finally, intervention methods should be evaluated to confirm that they reach two objectives: inform agency workers effectively and, more importantly, ensure these individuals use available mechanisms to protect their health and safety.

For Other Stakeholders

There are limits to occupational health teams' interventions. Even when agency workers are well informed, their vulnerability is a major obstacle to preventive action and to exercising their rights.

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6 The prevention program, each establishment's health program (included in the prevention program), the occupational health and safety committee, and the safety representative.

To improve the effectiveness and reach of interventions, it is important to work in collaboration with partners in occupational injury prevention, especially with the CNESST.

To reach agency personnel, it is absolutely necessary to go beyond the limits of the preventive intervention framework, which restricts access to preventive services to certain sectors of economic activity. Several sectors presenting significant health risks are not covered by any of the prevention mechanisms defined in the AOHS.⁶ This includes the "Other commercial and personal services" sector, which encompasses agencies. The lack of preventive mechanisms in these sectors and the presence of greater risks mean that the working conditions of agency workers are even more precarious than those of other workers.

It would be advisable to have a working group composed of individuals from the Réseau de santé publique en santé au travail, CNESST and several disciplines define new intervention methods that take into account the distinctive characteristics of agency workers. The group could be tasked with the following:

- **Disseminate the highlights of the Québec Public Health Program.** To reduce inequalities in health and ensure transparency and harmonization of the Réseau's practices, the Ministère de la Santé et des Services sociaux has decided to integrate into Québec's Public Health Program actions aimed at issues specific to workplaces not targeted by occupational health and safety regulations, and groups of vulnerable workers.

Temporary employment agencies and their workers have to be specifically identified so they can be given priority in actions designed to reduce social health inequalities in the workplace.

- **Verify contracts between agencies and client employers for compliance.**

According to information available, the Occupational Health and Safety Administration and the National Institute for Occupational Safety and Health [8] propose that occupational health and safety inspectors verify agency-host contracts during visits. Contracts should specify the following: work-specific training and information; availability and use of personal protective equipment, and which party is responsible for inherent costs. During its visits, the CNESST could follow suit.

- **Improve monitoring mechanisms of prevention programs, nomination of safety representatives and creation of health and safety committees within establishments in the priority groups.**

Monitoring mechanisms should be implemented that would force establishment representatives to respect mechanisms in the AOHS, and even encourage establishments not targeted by the regulations to do the same.

- **Develop a special intervention project.**

Through the above committees, propose preventive interventions for temporary employment agencies that complement those targeting client employers. This joint regional project involving the Réseau de santé publique en santé au travail and CNESST should make it possible to reach agency workers more effectively and directly.

To conclude, several possibilities to improve current practices can be developed within the current legal framework. However, the significant limits of the framework are difficult to ignore when it comes to implementation of effective preventive, protective and compensatory actions that would guarantee that all workers are treated fairly.

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LEGAL FRAMEWORK

LEGAL FRAMEWORK

Deficiencies in the Current Framework

As mentioned earlier, the triangular employment relationship poses an obstacle to protecting the health and safety of temporary agency workers. It is true that case law points to a shared responsibility between agency and client employer. Their health and safety obligations are the same for all workers on site, regardless of their employment relationship with the firm.¹ Nonetheless, changes to the current legal framework could be beneficial to identify problems linked to agency work before they occur. They would help improve effectiveness and sustainability of actions designed to reduce risks to which those workers are exposed.

The main issues posed by the legal framework are found in two specific pieces of legislation: the *Act respecting occupational health and safety*, L.R.Q. c. S-2.1 (LSSST), and the *Act respecting industrial accidents and occupational diseases*, L.R.Q. c. A-3.001. Over the past few years, researchers have repeatedly suggested making changes to the legal framework [1–6]. These suggestions were echoed in other Canadian provinces and industrialized countries where various solutions have been adopted. The ongoing process of revision of Québec’s occupational health and safety regulatory framework presents an ideal opportunity to bring

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changes to the framework that would take into account the growth of temporary employment agencies.

Possible Solutions

Given the preceding analysis, and based on Ontario’s and Australia’s experiences with changing their legal frameworks, three possible solutions are presented here. They concern employers’ responsibilities, risk outsourcing and underreporting of occupational injuries.

Clarify Obligations Related to Worker Protection

The CNESST can ensure employers comply with the obligations defined in the AOHS, including employers who are not the direct employers of agency workers. Nonetheless, an analysis of litigation shows that client employers in Québec more easily challenge efforts to ensure compliance with OHS legislation relating to agency workers than they do elsewhere. For instance, in Ontario and Australia, this problem does not exist because occupational health and safety laws do not require any proof of an employment relationship whatsoever between those who assign the work and those who carry it out.

The Law in Ontario

With regard to the obligations cited in the AOHS, which apply to anyone in positions to prevent occupational

1 Olymel, s.e.c. et Hamel St-Hilaire, 2013 QCCLP 6838 et Sobeys Québec c. CSST, 2012 QCCA 1329.

injuries, a source of inspiration should be Ontario’s legislative approach, which gives a broader definition of the concept of employer.

Section 1 – “employer” means a person who employs one or more workers or contracts for the services of one or more workers and includes a contractor or subcontractor who performs work or supplies services and a contractor or subcontractor who undertakes with an owner, constructor, contractor or subcontractor to perform work or supply services.²

In Ontario, occupational health and safety legislation has been applied to several “employers” for a single event,³ and a Court of Appeal of Ontario decision confirmed that this broad definition also includes “employers” of independent operators.⁴ In Ontario, the fact that agencies and client employers are both accountable for protecting agency workers’ health and safety is not up for discussion. This is an incentive for agencies and client employers to reduce hazards and promote prevention among this group of workers.

The Law in Australia

The Australian model is equally inspiring. In effect in New Zealand since 1 January 2016, it has dismantled the boundaries between “employer” and “worker” categories in occupational health and safety legislation. The objective is clear: Eliminate ambiguities in labour law with regard to different categories of workers, especially those in triangular employment relationships [1,8].

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2 *Act respecting occupational health and safety*, RSO 1990, c. 0.1.

3 *Teamsters Local Union No. 419 v. Metro Waste Paper Recovery Inc.*, 2009 CanLII 60617 (ON LRB).

4 *Ontario (Labour) c. United Independent Operators Limited*, 2011 ONCA 33.

5 *Work Health and Safety Act 2011 – section 7*.

Meaning of worker

(1) A person is a **worker** if the person carries out work in any capacity for a person conducting a business or undertaking, including work as:

- a. an employee; or
- b. a contractor or subcontractor; or
- c. an employee of a contractor or subcontractor; or
- d. an employee of a labour hire company who has been assigned to work in the person’s business or undertaking; or
- e. an outworker; or
- f. an apprentice or trainee; or
- g. a student gaining work experience; or
- h. a volunteer; or
- i. a person of a prescribed class.⁵

The definition of worker is very broad and includes all types of persons carrying out “work in any capacity for a person conducting a business or undertaking”. These persons have a duty to protect the health and safety of the different categories of workers whose services they use [8].

Discourage Outsourcing of Hazardous Work

As mentioned earlier, client employers frequently subcontract hazardous work to agency workers. The experience rating system applied to funding workers’ compensation, which is based on costs of previously compensated injuries incurred by employees of each employer, encourages outsourcing of hazardous work [2,7]. In Québec, injuries sustained by agency

workers affect the premiums paid by agencies rather than those of client employers, even though the latter control working conditions. Until very recently, the situation was identical in Ontario [2].

The Ontario Model

Following the 2012 publication of a report by the Law Commission of Ontario [9] that documented the challenges faced by vulnerable workers and proposed solutions to this issue, Ontario legislation was changed. In terms of workers' compensation legislation, the goal of the changes was to discourage outsourcing by providing for new regulatory powers:

The government of Ontario can make regulations

- a) *defining a temporary help agency for the purposes of this section⁶;*
- b) *requiring that, despite section 72, if a temporary help agency lends or hires out the services of a worker to another employer who participates in a program established under subsection (1) and the worker sustains an injury while performing work for the other employer, the Board, (i) deem the total wages that are paid in the current year to the worker by the temporary help agency for work performed for the other employer to be paid by the other employer, (ii) attribute the injury and the accident costs arising from the injury to the other employer, (iii) increase or decrease the amount of the other employer's premiums based*

upon the frequency of work injuries or the accident costs or both, and (iv) deem the other employer to be an employer for the purposes of sections 58 and 59 in such circumstances as may be prescribed;

- c) *prescribing circumstances for the purposes of subclause (b) (iv);*
- d) *requiring that, if a temporary help agency lends or hires out the services of a worker to another employer who participates in a program established under subsection (1) and the worker sustains an injury while performing work for the other employer, the other employer notify the Board of the injury;*
- e) *for the purposes of a notice required by a regulation made under clause (d), governing the notice, including prescribing the manner in which notice of an injury is to be given, the period of time within which notice is to be given and the parties to whom copies of the notice must be given; and*
- f) *prescribing penalties for failure to comply with requirements prescribed under clauses (d) and (e).⁷*

The changes allow the Ontario Workplace and Safety Insurance Board (WSIB)—equivalent to Québec's CNESST—to implement regulations that ensure the costs of occupational injuries are borne by an agency's client, even though the agency remains the worker's employer and pays

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6 "Temporary help agency" means an employer referred to in section 72 (*An Act to amend various statutes with respect to employment and labour*) who primarily engages in the business of lending or hiring out the services of its workers to other employers on a temporary basis for a fee.

7 *An Act to amend various statutes with respect to employment and labour*, 63 Elizabeth II, 2014, Schedule 5.

the premiums for those workers. However, it is not possible to appraise the application of this measure as the regulation has yet to be adopted.

The European Model

The European model⁸ provides for tools that could prove interesting to discourage agencies and client employers to outsource risks and promote prevention. European directive 91/383/EEC stipulates that Member States introduce measures to ensure the following:

- Workers be appropriately informed by firms of the risks they face and the qualifications legally required to perform the tasks (Art. 3);
- Workers receive sufficient training appropriate to the particular characteristics of the job, account being taken of their qualifications and experience (Art. 4);
- Establishments and/or user undertaking specify to the temporary employment business **in a formal contract** the occupational qualifications required and the specific features of the job to be filled, **before** workers are supplied (Art. 7);
- The user undertaking and/or establishment is/are responsible, for the duration of the assignment, for the conditions governing performance of the work (including health, safety and hygiene) (Art.8) (see Appendix 5).

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8 EUR-Lex. Access to European union law [Online]. Directive 91/383/CEE. Document 31991L0383. Available from eur-lex.europa.eu.

9 1. Member States shall have the option of prohibiting workers with an employment relationship as referred to in Article 1 from being used for certain work as defined in national legislation, which would be particularly dangerous to their safety or health, and in particular for certain work which requires special medical surveillance, as defined in national legislation.

2. Where Member States do not avail themselves of the option referred to in paragraph 1, they shall, without prejudice to Article 14 of Directive 89/391/EEC, take the necessary measures to ensure that workers with an employment relationship as referred to in Article 1 who are used for work which requires special medical surveillance, as defined in national legislation, are provided with appropriate special medical surveillance.

3. It shall be open to Member States to provide that the appropriate special medical surveillance referred to in paragraph 2 shall extend beyond the end of the employment relationship of the worker concerned.

10 Code du travail français, article D4154-1.

These provisions constrain Member States to take the necessary measures to ensure agencies and client employers deliver appropriate training and information to temporary workers even before they take up their positions.

Note: Article 5 of the Directive concerns use and medical surveillance of agency workers⁹. The article gives Member States the option of prohibiting agency workers from being used for work which would be dangerous or which requires special medical surveillance. French legislation prohibits firms from assigning tasks to temporary workers that would expose them to hazardous chemicals¹⁰:

Employers are prohibited from hiring temporary workers or workers on fixed-term contracts for jobs that would expose them to the following hazardous chemicals:

1. asbestos: repair or maintenance of flocking or lagging; removal, containment or demolition;
2. the following aromatic amines: benzidine, its homologues, salts and chlorine derivatives, 3,3'-dimethoxybenzidine (or dianisidine), 4-aminobiphenyl (or 4-aminodiphenyl);
3. sodium arsenite; (...) [translation]

Discourage Underreporting of Occupational Injuries

The occupational vulnerability of agency workers means that agency employees hesitate to report occupational injuries and

file for compensation. The problem of under-reporting is exacerbated because Québec is the only province in Canada where employers do not have to report all occupational injuries sustained by workers to the appropriate government body (CNESST).¹¹ This situation entails underreporting of less serious cases that, all in all, point to a drop in frequency and increase in severity of injuries, measured by longer durations of absence from work [10–12].

The Law in Ontario

To discourage underreporting of injuries, it is essential to insist that the law designed to reform Québec's occupational health and safety system be modified to oblige employers to report **all occupational injuries** to the CNESST. Currently, employers only have to report injuries involving amputation or death, and those sustained by several workers. Once again, Ontario legislation delivers an interesting model.

Notice of Accident Required

Employers must report a work related accident/illness to the Workplace Safety and Insurance Board (WSIB) if they learn that a worker requires health care and/or:

- *is absent from regular work*
- *earns less than regular pay for regular work (e.g., only working partial hours)*
- *requires modified work at less than regular pay*
- *requires modified work at regular pay for more than seven calendar days.*¹²

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11 AWCBC on Comparative Obligations.

12 *Workplace Safety and Insurance Act, 1997*, as amended, Section 21.

13 *An Act to amend various statutes with respect to employment and labour*, S.O. 2015, C. 34, Schedule 3, amending sections 22.1 and 158 of the *Workplace Safety and Insurance Act, 1997*. Employers were already obliged to notify the Board within three days after learning of an accident (section 21 (1)). In 2015, a section was added that prohibits the taking of any actions against a worker with the intent of discouraging the worker from filing a claim for benefits. In both cases and since 10 December 2015, the maximum penalty payable by a person who is not an individual and is convicted of an offence under the Act is \$500,000.

To force employers to comply with their obligation to file notices of accident, the Government of Ontario has imposed, since 2015, a fine of up to \$500 000. Employers who discourage or prevent workers from filing claims also face similar fines.¹³

Nonetheless, it is important to note that some aspects of Québec law should not be changed when amendments are eventually brought. For example, the *Act respecting industrial accidents and occupational diseases* provides better protection for agency workers than legislation in other Canadian provinces, including Ontario, because it guarantees a basic minimum level of benefits, regardless of the worker's earnings at the time of the injury [7,13]. This protective measure must remain in Québec legislation (sections 6 and 65 of the AIAOD).

To conclude, should it be reviewed the legal framework could allow the CNESST and occupational health teams to have powerful tools at their disposal to protect agency workers. In essence, the workers and their families would be the ones to gain the most. The positive effects on the health care system, equity among employers and Québec society would be undeniable.

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CONCLUSION

CONCLUSION

The director of public health's approach presented in this report has generated various findings related to precarious employment and the vulnerability it engenders.

In Québec, knowledge on the health impacts of precarious employment is very limited. Population health monitoring activities related to workers in precarious jobs, including agency workers, are lacking or even non-existent. Consequently, these workers are invisible, that is, they are excluded from population and administrative statistics. Indeed, they are almost as invisible to researchers, given the few studies on this issue conducted in Québec. It must be recognized that there is a real and pressing need to better understand the links between precarious employment and health, especially for temporary employment agency workers. In the current socioeconomic context, characterized by an upsurge in various types of precarious jobs and associated vulnerability, it is imperative that public health focus attention on these workers.

Because there are no intervention policies adapted to non-standard forms of employment, workers assigned to those jobs are regularly excluded from prevention practices designed to protect worker health and safety.

The occupational health and safety legal framework is unclear when it comes to occupational health and safety responsibilities for workers in precarious jobs and fosters outsourcing of risky work.

As a result, the director of public health for Montréal is committed to reviewing occupational health practices to ensure that agency workers benefit from optimal preventive interventions and so proposes the following:

To expand knowledge

1. Bring together stakeholders involved in monitoring occupational health (Statistics Canada, ISO, INSPQ, MSSS, IRSST) to develop a framework to identify or modify questions to ask when collecting data to enhance understanding of the realities of agency workers and workers in precarious jobs in general. The Table de concertation nationale en santé au travail (TCN-SAT) should be responsible for this project.
2. Similarly, modify the CNESST's administrative records that contain information which helps guide preventive actions targeting agency workers. The CNESST and TCN-SAT could work on this together.
3. In partnership with various organizations such as INSPQ, CNESST and IRSST, conduct a study on temporary employment agencies and the workers they hire. The director of public health will lead this project, as part of his research and monitoring mandate.
4. Mobilize research funding agencies, to encourage further studies on the realities of agency workers and, more specifically, the health and safety risks

for those workers. The MSSS could implement concerted actions with the Fonds de recherche du Québec and encourage federal research funding organizations to follow suit.

To better adapt preventive interventions

5. Develop a provincial intervention policy for agency workers that would ensure occupational health professionals are trained and workers informed, intervention tools are properly adapted, and service evaluation is planned. Again, TCN-SAT is called upon to play a central role.

To clarify employers' legal responsibilities toward agency workers

6. Review the current regulatory framework, in light of legislation recently adopted in Ontario and Australia, and of the Directive of the European Council dated 25 June 1991. The new legal framework should promote prevention and discourage outsourcing of risk by both agencies and client employers. The MSSS and MTESS could work together on reviewing the legislation.

Based on available knowledge, Montréal's director of public health has drawn an initial profile of the health status of agency workers, the risks to which they are exposed and the actions public health must take to incorporate this reality into its initiatives. However, collaborative action and involvement of stakeholders are required for real and long-lasting effects.

From a perspective of reducing work-related social inequalities in health, these preventive initiatives should include other categories of workers who share with agency workers certain characteristics: higher risk of job loss (which leads to underreporting of occupational injuries);

job strain that arises from increased work demands, limited flexibility and little control over working conditions; low wages; and limited capacity or inability to exercise their rights. It is also important to remember that only 25% of workers in Québec (15% of female workers) are covered by specific AOHS prevention mechanisms.

Montréal's director of public health urges his partners and other stakeholders to find the best solutions and promote effective actions that will help improve the living and working conditions of ALL workers.

APPENDICES

THE DIRECTOR'S LEGAL MANDATES

Under sections 53 and 55 of the *Public Health Act* (PHA), and section 373 of the *Act Respecting Health Services and Social Services* (AHSSS), the director of public health is responsible for identifying situations which could pose a threat to the population's health.

More specifically, "Where a public health director becomes aware of the existence or fears the occurrence in the region of a situation putting the population or a group of individuals at high risk ... and, in the director's opinion, effective solutions exist for the reduction or elimination of those risks, the director may formally request the authorities whose intervention appears useful to participate in the search for a solution adapted to the circumstances" (s. 55, PHA). The director of public health may identify "situations where intersectoral action is necessary to prevent diseases, trauma or social problems which have an impact on the health of the population, and, where the public health director considers it appropriate, tak[e] the measures considered necessary to foster such action" (s. 373, AHSSS), and establish "mechanisms providing for concerted action between various resources able to act on situations that may cause problems of avoidable morbidity, disability and mortality" (s. 53 para. 4, PHA). The director may "promote health and the adoption of public social policies capable of fostering the enhancement of the health and welfare of the population among the various resources whose decisions or actions may have an impact on the health of the

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general population or of certain groups" (s. 53 para. 5, PHA).

The object of the *Act respecting occupational health and safety* (AOHS: L.R.Q., c. S-2.1) is "the elimination, at the source, of dangers to the health, safety and physical well-being of workers" (s. 2). Under this Act as well as the AHSSS and PHA, the director of public health is mandated to protect the health of workers in his territory by helping work environments fulfil their obligations related to prevention of occupational injuries. He also carries out epidemiological studies as needed, transmits to the CNESST statistical data on the workers' state of health, and coordinates utilization of the resources of the territory.

Lastly, the director of public health coordinates the physicians in charge of health services in establishments. The legal mandates of physicians in charge in establishments include the following responsibilities: assess the resources required to implement the specific health program of the establishment and monitor its implementation. (s. 122); notify deficiencies in the health, safety or sanitation conditions likely to require preventive measures (s. 123); notify workers of any situation exposing them to a danger to their health, safety or physical well-being (s. 124); visit the workplaces regularly and take cognizance of all the information necessary for the performance of their duties (s. 125); Have access to any workplace and the information necessary for the performance of his duties (s. 126).¹

¹ AOHS, Division III; s. 117-120 (on the appointment of a physician in charge), p.33; s. 122-126 (on the legal mandates), p.33. [Online]: Available from <http://legisquebec.gouv.qc.ca/en>.

LIST OF STAKEHOLDERS CONSULTED

Bodies mandated with monitoring workers' health

Direction des risques biologiques
et santé au travail,
Institut national de santé publique
du Québec

Direction scientifique,
Institut de recherche Robert-Sauvé
en santé et sécurité du travail

Direction des statistiques des enquêtes
longitudinales et sociales,
Institut de la statistique du Québec

Revenu Québec

Bureau de la lutte à l'évasion fiscale
Recherche et innovation

Ministère de la Santé et des Services sociaux

Head of occupational health at
Direction générale de la santé publique

Employer representatives

Association of Canadian Search,
Employment and Staffing Services

Québec Employers' Council

Canadian Federation of Independent
Business

Fédération des chambres de commerce
du Québec

Union representatives

Confédération des syndicats nationaux

Fédération des infirmières et infirmiers
du Québec

Centrale des syndicats du Québec

Fédération des travailleurs du Québec

Community groups

Association de travailleurs et travailleuses
d'agences de placement

Au bas de l'échelle

Immigrant Workers' Centre

Union des travailleurs et travailleuses
accidenté(e)s de Montréal

Commission des normes, de l'équité et de la santé et sécurité au travail

Direction de l'indemnisation et
de la réadaptation

Direction du partenariat

Direction générale de la prévention-
inspection

Direction générale des opérations
centralisées

Service prévention-inspection,
Direction régionale de l'Île de Montréal-3

Réseau de santé publique en santé au travail montréalais

Elected officials

Mayor of Montréal

Representatives of provincial political parties from Montréal

The following bodies were informed of the consultation

Centre intégré universitaire de santé et des services sociaux du Centre-Sud-de-l'Île-de-Montréal

Table de concertation nationale en santé publique

Table de concertation nationale en santé au travail

Ministère de la Santé et des Services sociaux

METHODOLOGICAL CONSIDERATIONS

Data Sources

Data in Figures 1, 2 and 3 are from Statistics Canada, CANSIM tables available online (www5.statcan.gc.ca):

- Table 282-0080. Labour force survey estimates (LFS), employees by job permanency, North American Industry Classification System (NAICS), sex and age group, annual (persons x 1,000)
- Table 281-0024. Survey of Employment, Payrolls and Hours (SEPH), employment by type of employee and detailed North American Industry Classification System (NAICS), annual (persons)

Data presented in Chapter 4 are from CNESST's occupational injuries registry.¹ This databank contains information related to occupational injuries reported to and accepted by CNESST that meet the criteria set out in the *Act Respecting Industrial Accidents and Occupational Diseases (AIAOD)*. Data maturity is three years. For example, injuries reported in June 2011 are observed until June 2014.

Data Extraction Criteria for the Occupational Injury Registry

Cases of injuries included in Chapter 4 meet the following criteria:

- They occurred between 2005 and 2012 (date of initial event), and were recognized and accepted by CNESST.
- To identify temporary employment agencies, the five-digit NAICS code entered in the employer records linked with the injuries should be "56132 – Temporary Health Services" or "56133 – Professional Employer Organization".
- A facility's geographical location was determined using its postal code.
- The administrative region of a worker's place of residence was established through the regional CNESST branch in charge of the claim.
- The geographic group "Outskirts of Montréal" designates the administrative regions of Laval, Laurentides, Lanaudière and Montérégie.
- The geographic group "Greater Montréal" includes the administrative region of Montréal and the "Outskirts of Montréal".

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¹ Data in Chapter 4 were obtained with the cooperation of the Groupe de connaissance et surveillance statistique de la Direction scientifique de l'IRSSST. We thank them for their generosity, availability and professionalism.

- Occupational groupings were determined using the two-digit National Occupational Classification (NOC) codes. Several two-digit NOC codes were combined to form two groups:
 - ♦ Processing and manufacturing staff
 - 81 - Workers in processing industries
 - 83 - Machinists and related occupations
 - 85 - Other product fabricating, assembling and repairing occupations
 - 93 - Material handling and related occupations, n.e.c.
 - 95 - Other crafts and equipment operating occupations
 - ♦ Sales and services staff
 - 51 - Sales occupations
 - 61 - Service occupations

Comparability with Data Published by CNESST

Data presented in Chapter 4 are based on CNESST claims data, but were processed by IRSST for its own needs. As a result, the data may differ from the ones published by CNESST because of conceptual differences and differences regarding data selection criteria and data maturity.

Data Representativeness

The statistics presented in the report are consistent with injuries reported to the CNESST and accepted as work-related injuries or occupational diseases, and not to all work-related injuries or occupational diseases that occur in Québec. For instance, some categories of workers are not necessarily covered by CNESST; this is the case for independent workers, who are covered only if they apply for such coverage and pay the necessary premiums. There are also other instances in the case of temporary assignments.

SECTIONS 51 AND 51.1 OF THE AOHS

51. Every employer must take the necessary measures to protect the health and ensure the safety and physical well-being of his worker. He must, in particular,

(1) see that the establishments under his authority are so equipped and laid out as to ensure the protection of the worker;

(2) designate members of his personnel to be responsible for health and safety matters and post their names in a conspicuous place easily accessible to the worker;

(3) ensure that the organization of the work and the working procedures and techniques do not adversely affect the safety or health of the worker;

(4) supervise the maintenance of the workplace, provide sanitary installations, drinking water, adequate lighting, ventilation and heating and see that meals are eaten in sanitary quarters at the workplace;

(5) use methods and techniques intended for the identification, control and elimination of risks to the safety or health of the worker;

(6) take the fire prevention measures prescribed by regulation;

(7) supply safety equipment and see that it is kept in good condition;

(8) see that no contaminant emitted or dangerous substance used adversely affects the health or safety of any person at a workplace;

(9) give the worker adequate information as to the risks connected with his work and provide him with the appropriate

training, assistance or supervision to ensure that he possesses the skill and knowledge required to safely perform the work assigned to him;

(10) post up in a conspicuous place easily accessible to the worker all information transmitted by the Commission, the agency and the physician in charge, and put that information at the disposal of the workers, the health and safety committee and of the certified association;

(11) provide the worker, free of charge, with all the individual protective health and safety devices or equipment selected by the health and safety committee in accordance with paragraph 4 of section 78 or, as the case may be, the individual or common protective devices or equipment determined by regulation, and require that the worker use these devices and equipment in the course of work;

(12) allow workers to undergo the medical examinations during employment required under this Act and the regulations;

(13) give, to the workers, the health and safety committee, the certified association, the public health director and the Commission, the list of the dangerous substances used in the establishment and of the contaminants that may be emitted;

(14) cooperate with the health and safety committee, or as the case may be, the job-site committee and with any person responsible for the application of this Act and the regulations and provide them with all necessary information;

(15) put at the disposal of the health and safety committee the equipment, premises and clerical personnel necessary for the carrying out of its functions.

1979, c. 63, s. 51; 1992, c. 21, s. 303; 2005, c. 32, s. 308.

51.1. A person who, although not an employer, retains the services of a worker for the purposes of his establishment must fulfill the obligations imposed on an employer by this Act.

2009, c. 19, s. 17.

EUROPEAN COUNCIL DIRECTIVE 91/383/EEC

Council Directive 91/383/EEC¹ states the following in Articles 3, 4, 7, 8:

Article 3

Provision of information to workers

Without prejudice to Article 10 of Directive 89/391/EEC, Member States shall take the necessary steps to ensure that:

1. before a worker with an employment relationship as referred to in Article 1 takes up any activity, he is informed by the undertaking and/or establishment making use of his services of the risks which he faces;

2. such information:

- covers, in particular, any special occupational qualifications or skills or special medical surveillance required, as defined in national legislation,

and

- states clearly any increased specific risks, as defined in national legislation, that the job may entail.

Article 4

Workers' training

Without prejudice to Article 12 of Directive 89/391/EEC, Member States shall take the necessary measures to ensure that, in the

cases referred to in Article 3, each worker receives sufficient training appropriate to the particular characteristics of the job, account being taken of his qualifications and experience.

Article 7

Temporary employment relationships: information

Without prejudice to Article 3, Member States shall take the necessary steps to ensure that:

1. before workers with an employment relationship as, referred to in Article 1 (2) are supplied, a user undertaking and/or establishment shall specify to the temporary employment business, inter alia, the occupational qualifications required and the specific features of the job to be filled;

2. the temporary employment business shall bring all these facts to the attention of the workers concerned.

Member States may provide that the details to be given by the user undertaking and/or establishment to the temporary employment business in accordance with point 1 of the first subparagraph shall appear in a contract of assignment.

.....

¹ Council Directive supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship - 91/383/EEC.

Article 8

Temporary employment relationships: responsibility

Member States shall take the necessary steps to ensure that:

1. without prejudice to the responsibility of the temporary employment business as laid down in national legislation, the user undertaking and/or establishment is/are responsible, for the duration of the assignment, for the conditions governing performance of the work;

2. for the application of point 1, the conditions governing the performance of the work shall be limited to those connected with safety, hygiene and health at work.



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