

A New Set of Changes to the Illinois Day and Temporary Labor Services Act is on the Horizon

Jeremy Edelson, Francesca Giderof and Mira Radu
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Attorneys

Jeremy L. Edelson
Francesca M. Giderof

As the *Fast Laner* previously reported, significant changes to the Day and Temporary Labor Services Act (Act) started to impact both temporary labor agencies (Agencies), as well as third-party clients (Clients) which utilize them, as of August 4, 2023. A recent amendment to the Act passed both houses of the Illinois legislature and was signed into law by Governor Pritzker on August 9, 2024. The most significant changes to the Act relate to how wages are determined for day or temporary laborers. The amended Act also provides for additional responsibilities for Agencies as well as their Clients. While the amendment became effective upon the Governor's signature, the Illinois Department of Labor is working on rules to further implement these changes. Please note that the "equal benefits" portion of the law remains enjoined and is not currently being enforced by the Department.

Equal Pay For Equal Work - New Requirements

To qualify for equal pay for equal work requirements, a worker must have performed more than 720 hours of work within a 12-month period at the same Client. Additionally, the bill revised its "equivalent benefits" provision to "substantially similar benefits." The bill now states that Agency's may comply by paying the hourly average cash equivalent of the actual cost of the benefits the client provides its employees in lieu of providing the benefits.

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Now, the wage can be calculated using one of two methods: (1) taking the wage of a directly hired comparator employee of the Client as the basis for compensation, or (2) relying on data from the Bureau of Labor Statistics as the basis for compensation, if the Client chooses to do so. The determination of benefits that an Agency must provide day or temporary laborers follows the directly hired employee of the Client formula.

1. Directly hired comparator employee basis

To be considered a comparator, an employee of the Client company must: (1) be directly hired; (2) perform the same or substantially similar work; (3) have the same or a substantially similar level of seniority; and (4) be entitled to overtime under the FLSA (non-exempt). A day or temporary laborer must be paid at least the straight hourly rate (or hourly equivalent) of the lowest paid comparator. If the Client does not have a comparator employee with the same or substantially similar level of seniority, the wage should be calculated based on the rate of the lowest paid directly hired non-exempt employee with the closest level of seniority.

2. Bureau of Labor Statistics basis

The Standard Occupational Classification System must be used to determine the job classification of the laborer and the Occupational Employment and Wage Statistics Survey to determine the hourly rate for the area in Illinois where the work is performed. A day or temporary laborer who performs work at the same Client for more than 720 hours within a 12-month period should be paid not less than the median base hourly rate (or hourly equivalent) of workers in the same job classification and geographic area. If a laborer works at the same Client for more than 4,160 hours within a 48-month period, then they should be paid not less than the 75th percentile of the corresponding hourly rate based on the BLS data.

Equal Pay for Equal Work - Exception

The equal pay for equal work requirements will not apply to any company where the directly hired comparator employee is covered by a valid collective bargaining agreement in effect on April 1, 2024, for the duration of that agreement. After the current agreement expires, the Agency will not be required to pay a cash equivalent of the actual cost of the benefits the Client provides when the comparator employees are subject to a collective bargaining agreement.

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Application Receipt Requirement

An Agency is required to provide a worker who seeks work but cannot be placed with a Client or otherwise contracted to work for that day with an application receipt as confirmation that the applicant sought work, including in-person, online, or through an app-based system. This confirmation must be in a form that is approved by the Illinois Department of Labor (IDOL), and must be signed by an employee of the Agency. The receipt must include the applicant's contact information, date and time the applicant sought work, the manner in which the applicant sought work, and the specific work sites or type of jobs sought by the applicant.

Employment Notice Changes

The employment notice is changed to include the following additional items: a list of basic duties of the job to be performed, the county where the laborer will work, and information on how wages are to be determined. The wage section must include either the seniority and hourly wage of the comparator being used or the Standard Occupational Classification System published by the U.S. Department of Labor.

New Client Responsibilities

The hazard training that the Client company must provide a day or temporary laborer prior to engaging in work must now be specifically in compliance with the OSHA standards, guidance, or best practices.

Next Steps

The changes and additions to the Act are significant and may pose challenges in ensuring compliance. Contact a Laner Muchin attorney for assistance in understanding and implementing such changes in your business practice.