Federal Court Enjoins "Equivalent Benefits" Portion of the Illinois Day and Temporary Labor Services Act

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In August 2023, Illinois Governor Pritzker signed a bill which amends the Illinois Day and Temporary Labor Services Act (Act). This new law impacts both temporary labor agencies (Agencies) and Third-Party Clients (Clients) which utilize them.

Section 42 of the amendments require that temporary laborers who are assigned to a Client for more than 90 calendar days receive "equal pay for equal work," which includes benefits. Under the amendments, Agencies must pay laborers at least as much as the Client's lowest paid directly hired employee with the same level of seniority and performing the same or substantially similar work. Agencies had the option of providing the hourly cash equivalent of those benefits in lieu of providing the actual benefits. This provision of the Act was set to go into effect on April 1, 2024.

Section 11 of the amendments further required Agencies to disclose to laborers, prior to the start of an assignment, whether the Client location is engaged in a strike, lockout or other labor trouble. Additionally, Section 67 of the amendments included a private right of action, which allows "interested parties" to bring actions against Agencies or Client Companies for violations of the Act.

In December 2023, multiple staffing agencies and industry associations filed a lawsuit in federal court to enjoin the Illinois Department of Labor (IDOL) from enforcing Sections 42, 11, and 67 of the Act. On March 11, 2024, the court granted the preliminary injunction from enforcing Section 42, the

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equivalent benefits provision of the Act, in *Staffing Services Association of Illinois et al. v. Flanagan*, Case No. 23-CV-16208 (N.D. Ill. Mar. 11, 2023*).* The court did not enjoin Sections 11 and 67.

In order to grant a preliminary injunction, plaintiffs need to establish they are likely to succeed on the merits, likely to suffer irreparable harm, that the balance of equities tip in their favor and that an injunction is in the public interest. In enjoining Section 42, the court found that the plaintiffs' challenge would likely succeed on the merits under its argument that ERISA preempts the "equivalent benefits" provision of the Act. In fact, the court held that "Section 42 raises the very concern ERISA preemption seeks to address." The court went on to analyze Section 42 under the "irreparable harm" standard. The court held that the plaintiffs demonstrated more than a mere possibility of irreparable harm, and that forcing plaintiffs to comply with Section 42 would "incur the expense and burden of determining the relevant values of benefits and creating, selecting, modifying, or supplementing existing ERISA plans or paying the difference." The court also noted that open questions on how Agencies will ascertain the benefits provisions and the actual cost of the benefits makes the financial harm aspect difficult to compute, which supports the irreparable nature of the harm.

In sum, this decision means that the equivalent benefits portion of the Act will currently not be enforced; however, the requirements of equal wages, informing laborers of labor disputes and the section of the Act providing interested parties a private right of action remain enforceable. The IDOL has 30 days to appeal the court's decision.

If you have any questions regarding the implications of this decision on your business, please contact a Laner Muchin attorney.