Breaking News Impacting Illinois Staffing Agencies & User Clients

Labor & Employment Law Update

By Jeffrey Risch on August 9, 2024

Today, Governor Pritzker signed Senate Bill 3650 (SB 3650), which amends the Illinois Day and Temporary Labor Services Act (the "Act") -- **AGAIN**. This is the 3rd major amendment to the Act in just over a year. The impact of the changes are effective immediately. The latest amendments are primarily focused on clarifying pieces of the massive changes to the staffing industry ushered in last August through House Bill 2862 (HB 2862).

SB 3650 imposes NEW and additional requirements on staffing agencies and third-party user clients who use temporary labor in Illinois, including the following:

EQUAL PAY AND BENEFITS MANDATES

Once a temporary laborer is on assignment with a third-party client and works *more than 720 hours in a rolling 12-month period from April 1, 2024 forward*, they must receive a certain level of pay and benefits. How this level is determined can vary and depends, in large part, on the user client's preference.

SB 3650 provides two different methods for determining the hourly rate of pay, for the user client to choose in their discretion. These two methods are:

Method 1: The temporary worker must be paid at least the rate of the user client's lowest paid directly hired FLSA non-exempt similarly situated regular employee with the same or substantially similar seniority to the temporary worker (and, if that person doesn't exist – then the lowest paid directly hired FLSA non-exempt employee of the user client with the closest level of seniority to the temporary worker); **or**

Method 2: The temporary worker must be paid not less than the median base hourly rate, or hourly equivalent if paid on a salary basis, of workers working in the same or a substantially similar job classification, as reflected in the detail level of the most recent Standard Occupational Classification System published by the United States Department of Labor's Bureau of Labor Statistics, in the same metropolitan area or non-metropolitan area of Illinois where the work is performed, as reflected in the most recent Occupational Employment and Wage

Statistics Survey.

NOTE: Under Method 2, once a temporary worker works more than 4,160 hours within a 48-month period, then they must be paid not less than the 75th percentile base hourly rate, or hourly equivalent if paid on a salary basis, of such workers.

As for paying the equivalent benefits mandate, a day and temporary labor agency shall provide a day or temporary laborer substantially similar benefits to the job classification of employees performing the same or substantially similar work on jobs and performed under similar working conditions. A day and temporary labor service agency may pay the hourly average cash equivalent of the actual cost of the benefits the third party client provides the applicable directly hired employees in lieu of benefits required under this subsection. While SB 3650 slightly alters the benefits mandate as compared to HB 2862, the changes appear to have no impact on the current FEDERAL COURT INJUNCTION that halted enforcement of the benefits mandate. See our prior blog update concerning this federal injunction here. The State of Illinois is appealing the injunction to the 7th Circuit Court of Appeals and we continue to monitor its developments.

COLLECTIVE BARGAINING AGREEMENT EXCEPTION

The "equal pay and benefits" mandate does not apply if the direct hire employees of the user client performing the same or substantially similar work as the temporary laborers assigned to work at the user client are covered by a valid collective bargaining agreement. Therefore, user clients who are unionized should not be impacted by the "equal pay and benefits" mandate.

UPDATED EMPLOYEE NOTICE AND NEW APPLICANT RECEIPT MANDATE

Staffing agencies must also update their employee notice forms to now include, and provide workers with notice of, the following: 1) a list of basic job duties; 2) the county of the third-party client's location; and 3) if a temporary laborer is entitled to equal pay pursuant to the Act, notice of either: a) the seniority and hourly wage of the comparator being used to determine the worker's equal pay wage; or b) the standard occupational classification if used to determine the worker's equal pay rates. Temporary laborers must receive an updated employee notice form when any of the required notice terms change or become applicable (i.e., once a worker meets the 720 hours worked threshold or in the event of a labor dispute).

There's also a NEW applicant "receipt" mandate. If an applicant seeks a work assignment through a staffing agency (including by applying in-person, online, or using an app-based system) and is not placed with a third-party client or otherwise contracted to work for that day, staffing agencies must now provide

the applicant with confirmation that the applicant sought work, which must also include: 1) the name and location of the staffing agency and branch office; 2) the name and address of the applicant; 3) the date and the time that the applicant sought the work assignment; 4) the manner in which the applicant sought the work assignment; and 5) the specific work sites or type of jobs sought by the applicant, if applicable.

Note: The IL Department of Labor must publish updated/model forms related to these new notice and receipt mandates.

REQUEST FOR INFORMATION

Upon request, the user client must provide the staffing agency with all necessary information related to job duties, working conditions, pay, seniority, and benefits it provides to the applicable classification of directly hired employees assigned more than 720 hours within a 12-month period or 4,160 hours within a 48-month period. Staffing agencies must then calculate and determine the straight-time hourly rate of pay and the benefits it shall offer the temporary laborer, including any cash equivalent. Once the user client provides such information to the staffing agency, then the staffing agency assumes all legal liabilities related to the Act's "equal pay and benefits" mandates.

RIGHT TO REFUSE AN ASSIGNMENT TO A LABOR DISPUTE

SB 3650 clarifies that staffing agencies cannot send a temporary laborer to a place where a strike, lockout, or work stoppage exists without notifying the worker in writing of any such labor dispute at the time of dispatch and their right to refuse the assignment without prejudice to receiving another assignment.

SAFETY TRAINING MANDATE CLARIFICATION

SB 3650 clarifies that the safety training mandates ushered in through HB 2862 must be tailored to the particular hazards and must be consistent with training requirements provided for in standards, guidance, or best practices issued by OSHA.

NEW DEFINITIONS

SB 3650 adds the following definitions to the Act:

- "Applicant" means a natural person who seeks a work assignment at a day and temporary labor service agency;
- "Labor dispute" means any controversy concerning wages, hours, terms, or conditions of employment; and
- "Seniority" (for purposes of the equal pay and benefits mandate) means the number of months a day or temporary laborer has been assigned to and

worked for the user client compared to the number of months a directly hired comparator employee has been employed by the user client.

WHAT'S NEXT???

The Illinois Department of Labor now needs to publish new administrative rules interpreting these latest amendments as well as navigating the changes brought about through HB 2862 (which include a host of new safety mandates on both the staffing agency and the user client). As of now, there are no administrative rules in effect that interpret the amendments to the Act under either HB 2862 or SB 3650. Stay tuned for more updates.