

Federal Court Blocks Key Portion of the IL Day & Temporary Labor Services Act

Labor & Employment Law Update

By Jeffrey Risch on March 12, 2024

In a case filed in the Northern District of Illinois (*Staffing Services Association of IL, et. al. vs. Jane Flanagan, Director of the IL Department of Labor*), a federal district court granted plaintiffs' request for injunctive relief thereby preventing the IL Department of Labor (IDOL) from enforcing a key provision contained in the 2023 amendments to the IL Day & Temporary Labor Services Act (IDTLSA). While the plaintiffs were not successful in their attempt to block other key sections of the amendments involving "notifying temporary workers of labor disputes" and "interested parties having standing to pursue private lawsuits on behalf of workers," the court blocked the "equivalent benefits" piece to the "Equal Pay for Equal Work" section of the law.

The "Equal Pay for Equal Work" provisions contained in Section 42 of the IDTLSA requires staffing agencies in Illinois to pay temporary employees who work at a particular site for more than 90 days within a 12 month rolling period at least the same wages and equivalent benefits as the lowest paid, comparable, directly-hired employee employed by the third-party client. The staffing agency may alternatively pay "the hourly cash equivalent" of the actual cost of benefits in lieu of providing the actual benefits. The mandate also requires third-party user clients to provide staffing agencies with "all necessary information related to job duties, pay, and benefits of directly hired employees" in order to allow the staffing agencies to comply.

Plaintiffs argued that Section 42's "equivalent benefits" provisions should be deemed preempted by the Employee Retirement Income Security Act of 1974 (ERISA). ERISA preempts any and all local ordinances or state laws if they impermissibly relate to any employee benefit plan covered by ERISA. In short, the court here conducted its analysis and concluded the "equivalent benefits" mandate impermissibly relates to ERISA benefit plans.

In reaching its conclusion, the court noted, in relevant part, that staffing agencies are forced to determine the value of many different ERISA benefit plans and then determine whether to provide the value in cash or the benefits themselves by modifying their ERISA plans or adopting new ones. The court found that staffing

agencies must make judgment calls about eligibility and levels of benefits on an individualized and ongoing basis. The IDOL maintained that the cash alternative saves Section 42 from ERISA preemption. In raising this argument, the IDOL was quick to point to Illinois' prevailing wage law already in existence and previously found by the courts to not be preempted by ERISA. However, the court went on to distinguish the differences in the laws and continued to stress how Section 42 denies staffing agencies the ability to administer its ERISA plans uniformly and forces them to conduct individualized assessments on an ongoing basis. Of particular consequence, the court found that "[f]or employees who work in Illinois, [staffing] agencies have to collect and analyze benefit plan information from their client for a comparable employee, compare those plans to their existing plans, and determine whether to modify or supplement their plans, calculate and pay the cost of any benefits they do not presently provide, or both."

What Now? The court's decision certainly strikes a blow to the proponents' ultimate goal of trying to run temporary staffing agencies out of Illinois. However, the battle has just begun. Staffing agencies and their user clients need to continue to monitor ongoing legislative developments moving forward. We can expect more legislative initiatives and IDOL rulemaking designed to make it difficult on the staffing industry in Illinois. *Unfortunately, what we are seeing play out is that the 2023 amendments to the IDTLSA are already harming the actual workers that want to remain on a temporary assignment at a particular user client site for reasons all their own.* Be assured that Amundsen Davis LLC's Labor & Employment attorneys are intimately involved with this subject and will continue to monitor and report on all significant developments.

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