

Major Game Changing New Law Impacting Illinois' Staffing Industry – Including All Employers That Utilize Temporary Labor

Labor & Employment Law Update

on June 26, 2023

Illinois temporary staffing agencies are already highly regulated under the Illinois Day and Temporary Labor Services Act (the “Act”). As it currently stands, the Act requires temporary staffing agencies to register with the Illinois Department of Labor (IDOL), which requires proof of, for example, workers compensation insurance, as well as identification of client and employee data. The Act also currently restricts fees that temporary staffing agencies may charge their clients for converting the agency's staff to permanent employees, and provides many additional safeguards pertaining to temporary workers' pay and other terms and conditions of employment.

New legislation passed under House Bill 2862, (the “Bill”), goes leaps and bounds further in the regulation of temporary labor, and has the potential of changing the entire landscape of employers' use of temporary labor. The Bill was sent to Governor Pritzker on June 16, 2023 for signature. It is expected that he will sign the Bill into law --- which has a July 1, 2023 effective date. If he signs the Bill after July 1st, then the law will go into effect immediately.

One of the most significant changes is the new requirement that after 90 days of an assignment to a client by the staffing agency, the temporary worker must be paid *at the same rate and provided the same benefits as the client's comparable regular employees*. In other words, this is another “equal pay for equal work” law --- but in this case, the required equality is not a gender or race based comparison, but wage equality between temporary and regular employees.

Key components of the law are:

Temporary Staffing Agencies Must Pay and Provide Their Employees with Benefits on Par with Their Client's Comparable Employees After They Have Been Assigned to the Client for More Than 90 days

Under this Bill, temporary staffing agencies must pay their employees who are assigned to a client for more than 90 calendar days, not less than the rate of pay and level of benefits (or cash equivalent) that the client pays/offers its lowest paid employee with the “same level of seniority” and “performing the same or substantially similar work” on jobs requiring “substantially similar skill, effort, and responsibility” performed under similar working conditions. If no comparable employee exists, the requirement adjusts to the lowest paid employee of the client “with the closest level of seniority at the company.” Hopefully, regulatory guidance to be prepared by the IDOL will clarify whether the “90 calendar days” trigger means 90 consecutive calendar days, or whether the 90 days could occur over a 3, 6, 12 or undefined number of months or other period of time. Presumably, the intent is 90 consecutive calendar days, but that is not clear.

It should be noted that an unfortunate result of this legislation could be that staffing agencies will simply reassign their employees when they near 90 days of assignment with a single client. This practice would diminish the likelihood that temporary employees will be hired as regular employees by agency clients since the temporary workers would have less time to establish themselves as skilled and valuable staff to the client.

Aside from these concerns, it should be expected that disputes/litigation will arise regarding which employees are comparable.

Clients Must Provide Their Staffing Agency With Information Regarding Their Regular Employee's Job Duties, Pay and Benefits Upon Request

Upon request from a temporary agency, their clients are required to “timely” give the agency “all necessary information related to job duties, pay, and benefits of directly hired employees necessary for the day and temporary labor service agency to comply with this section.” *If an employer does not produce the requested information, the client will be deemed to have committed a violation of the Act.* The mandated sharing of confidential compensation information raises a host of concerns.

Labor Disputes

Notice must be provided by temporary agencies to temporary workers informing them that they have the right to refuse to work for a client where they would have to cross a picket line and that such a refusal will not prejudice the employees' right to receive future assignments. While this specific provision may be pre-empted under federal labor law, the IDOL and labor organizations will certainly look to enforce this provision to the greatest extent possible.

Tripled Penalties for Violations of the Act and New Rights of “Interested Parties” to File Civil Lawsuits for Violations of the Act

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Penalties under the Act can be substantial and maximum penalties are tripled under this Bill to up to \$7,500 for each repeat violation for each day each employee is assigned by a non-compliant agency. The Act also provides for the right of the Attorney General and any “interested party” defined as “an organization that monitors or is attentive to compliance worker safety, wage and hour requirements or other statutory requirements” a right to file a civil lawsuit and recover injunctive relief and attorney’s fees, as well as the right to retain 10% of any statutory penalties assessed (with the balance directed to the Illinois Child Labor and Day and Temporary Services Enforcement Fund). This may be by far the most impactful part of the new mandates.

Staffing Agency Has a Duty to Inspect Client Worksite for Safety, Health Practices and Hazards Before Assignment

New to the Act are several requirements relating to workplace safety and hazards, including the Staffing Agencies explicit duty to inquire about safety and job hazards, request that the client correct any identified hazards and requirement that they remove employees if hazards are not mitigated. Staffing Agencies are also required to provide safety training to its employees before placing them at a client’s worksite. Staffing Agency clients must document and inform the Staffing Agency of anticipated job hazards and also provide training.

Staffing Agencies’ Registration May be Suspended or Revoked

Under the Act, in addition to the IDOL having authority to suspend or revoke staffing agencies’ registrations upon violations of the Act, the Illinois Attorney General may now also suspend or revoke and agency’s license.

Impact?

The impact of this legislation is far reaching: the cost savings to employers using longer term temporary labor will be reduced if the temporary staffing agencies pass on the new required wage rates and benefit costs to their clients. The consequences of non-compliance are serious and can potentially be financially disastrous.

An alternative is for the staffing agencies reassign its employees before an assignment reaches 90 days, which would almost certainly be unwelcome to the temporary workers for whom this legislation is intended to benefit insofar as this would mean regular client reassignment, and in turn, less of a chance of conversion to regular employment with the client.

In short, the “equal pay” provisions of this law seem to present a disruptive and costly burden which may not improve pay or benefits for temporary workers and may actually disrupt the steady work temporary workers may enjoy through longer term assignments. However, as this Bill looks like it will be signed into law in the near future, temporary staffing agencies and their clients need to start immediately preparing for these changes. Additionally, the IDOL has been

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directed to issue regulations on these new mandates. Employers need to work through these changes and stay well informed on all related developments.

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