

February 2023

Client Advisory

Temporary Workers' Bill of Rights Signed into Law

On Monday, February 6, 2023, New Jersey Governor Murphy signed into law Assembly Bill, A1474, providing a number of far-reaching and new protections for temporary workers, and also imposing new requirements on temporary staffing agencies and their clients. The law is intended to help remedy the effects identified in studies and surveys finding that, generally, temporary workers are particularly vulnerable to abuse of their labor rights.

The law follows the Governor's veto in 2022 of an earlier version which had a much broader application. In response to his veto, the new law limits its provisions to certain specified occupations that are presumably at the greatest risk of exploitation. Specifically, this new law is now limited to temporary workers in the following classifications:

- 33-90000 Protective Service Workers (including, for example, first-line supervisors of correctional officers, police officers, detectives, security workers, firefighters; bailiffs; correctional officers; parking enforcement workers; animal control workers; security guards; school bus monitors; lifeguards)
- 35-0000 Food Preparation and Serving Related Occupations
- 37-0000 Building and Grounds Cleaning and Maintenance Occupations
- 39-0000 Personal Care and Service Occupations
- 47-2060 Construction Laborers
- 47-30000 Helpers, Construction Trades
- 49-0000 Installation, Maintenance, and Repair Occupations
- 51-0000 Production Occupations
- 53-0000 Transportation and Material Moving Occupations

The law allows the Bureau of Labor Statistics to identify additional classifications of "temporary laborers," but for now, the law's reach is limited to the above list. Thus, staffing agencies and their clients who do not employ or contract with these classifications of workers are not affected by the new law.

Rate of Pay Requirements

The new law has a number of new requirements, perhaps the most significant being that covered temporary workers must be paid, at least, the average rate of pay and average cost of benefits (or the cash equivalent thereof) as employees of the actual client/employer that are "performing the same or substantially similar work on jobs the performance of which requires equal skills, effort, and responsibility, and which are performed under similar working conditions[.]" Staffing agencies and their clients who fail to comply with this requirement are jointly and severally liable for a resulting penalty of up to \$5,000 for each violation. Unfortunately, as of now, there is no guidance for staffing agencies and employing companies to use to determine what qualifies as "the same or substantially similar work" or what qualifies as "equal skills, effort, and responsibility."

Staffing Agency's Notice and Recordkeeping Requirements

The law also imposes several notice requirements on temporary staffing agencies. Agencies must post a notice to be supplied by the Commissioner of Labor and Workforce Development containing a summary of the law and information explaining how to file complaints. Additionally, agencies must provide notices to laborers at the time of placement, including, but not limited to, contact information for relevant third parties, description of the work, wages, training and clothing requirements, meal or equipment offerings, schedule of the assignment, and sick leave. An agency's failure to comply may result in a civil penalty of an amount between \$500 to \$1,000 dollars for each violation.

Agencies also must provide a detailed itemized statement on paycheck stubs including, among other things, contact information for the client and information related to wages and hours worked. Agencies must advise laborers of the availability of their annual earnings summary, and provide the summary by February 1 of each year. Violations will result in a penalty up to \$500 and a maximum penalty of up to \$2,500 for subsequent violations, applied every day until the violation is corrected. Staffing agencies must keep records for six years for

each laborer including proof of required notices, copies of contracts and invoices with the client, hours worked, rate of pay, and amounts of deductions withheld.

Staffing Agency's Client's Notice Requirements

Clients (i.e., employing companies) also have new notice obligations to the staffing agency. Specifically, clients are required to provide the agency with the laborer's name and address, specific location sent to work, type of work performed, the number of hours worked, the hourly rate of pay, and the date sent within seven days following the last day of the laborer's work week. A client's failure to comply with such notice requirements will result in a civil penalty up to \$500 for each violation.

Limitations on Transportation Requirements and Fees

Staffing agencies may no longer require a laborer to use transportation provided by the agency. However, where an agency does arrange for the transportation to and from the worksite, agencies are precluded from charging any fees to the laborer. Additionally, staffing agencies must ensure any transportation provided by the agency must be safe and properly equipped as required by applicable law and keep records of such compliance. Staffing agencies face violations of up to \$5,000 for each violation of the transportation requirements.

Client's Right to Offer and Laborers' Right to Accept Permanent Positions

Staffing agencies may not restrict the right of a client to offer employment to the laborer, or restrict a laborer from accepting a permanent position with a client. However, agencies are permitted to charge a placement fee to the client, within the limits identified by the law, and as long as the agency complies with specified notice requirements on wage payment and notice forms. Staffing agencies with a policy or practice in violation of this section will be subject to penalties in the amount of \$50.00 for each laborer affected for each day they are prohibited from accepting employment plus actual damage in a civil lawsuit.

Certification Requirements

A new registration requirement is now in effect for staffing agencies. That is, a staffing agency is prohibited from placing laborers until it is certified by the Director of the Division of Consumer Affairs in the Department of Law and Public Safety ("Director") to do so. First, agencies must register as a temporary help service firm and certification follows submissions of proof of required insurance and certain representations regarding the agency's laborers. Additionally, the agency's principal executive officer must certify under oath to the agency's compliance with the law's requirements. As part of the process, agencies must pay a certification fee up to a maximum of \$2,000 per year and a fee of up to \$750 per year for each branch office or other location where the agency "regularly conducts its business."

Certified staffing agencies in good standing will be listed on the website of the Division of Consumer Affairs. The list will also identify which agencies' certifications have been suspended or revoked including the reason for the suspension or revocation. Failure to obtain certification will result in a penalty of \$5,000 for each day the agency continues to operate and make placements of laborers covered under this law.

Although staffing agencies are exclusively responsible for obtaining certification, clients are prohibited from entering into contracts with an agency that is not certified. Clients must verify an agency's status with the Director before entering into a contract and verify the agency's continued certification thereafter on March 1 and September 1 of each year. Failure to do so will result in a penalty of up to \$500 per day during which the client contracts with the agency.

Surety Bond Requirement

The law requires staffing agencies to obtain a surety bond for at least \$200,000, and file a copy of the bond with the Director. However, the requirement to obtain a bond will not apply to agencies whose laborers are covered by a collective bargaining agreement that expressly provides for wages, hours of work, working conditions, an expeditious process to resolve disputes concerning nonpayment of wages, documentation of its current workers' compensation insurance policy, and compliance with the requirements of the law.

Anti-Retaliation Requirement

The law protects temporary laborers from retaliation for exercising their rights under the law. Any disciplinary

action taken against a laborer within 90 days of the laborer's exercise of rights will raise a rebuttable presumption of retaliation. Violations may result in civil penalties of up to \$250 for a first violation and \$500 for subsequent violations. Successful plaintiffs bringing retaliation claims in a civil lawsuit are entitled to the greater of all legal or equitable relief as may be appropriate, or liquidated damages equal to \$20,000 per incident of retaliation and reinstatement.

Given these additional protections for temporary laborers and requirements on staffing agencies and their clients, it is essential that agencies and clients both review their employment policies and practices, as well as their contracts with each other, to ensure compliance. If you have questions about whether your policies and practices comply with the expanded protections and requirements, please contact Meghan O'Brien at 856-354-3060 or mobrien@archerlaw.com.

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