March 2, 2023

UPDATED: Groundbreaking Changes to Temporary Workers' Rights in New Jersey

UPDATE (05/18/2023): In accordance with the May 7, 2023 effective date for the notice and anti-retaliation provisions of the Temporary Workers' Bill of Rights (A1474/S511) (the Bill), the New Jersey Department of Labor and Workforce Development (NJ DOL) issued a "Temporary Laborer Assignment Notification" form on April 23. Temporary staffing agencies must complete and provide the form to all temporary workers when they are assigned to a temporary position. The form requires disclosure of detailed information about the temporary work assignment, including, among other things, the name, address and contact information for the temporary staffing agency and the third-party employer; the applicable workers' compensation carrier; the temporary worker's assigned worksite, description of the position, schedule, wages and length of the assignment; and whether meals, equipment, training and transportation are provided and on what terms. The form is available here. Last month, New Jersey Governor Phil Murphy signed into law the Temporary Workers' Bill of Rights (A1474/S511) (the Bill), which greatly expands the protections afforded to New Jersey's hundreds of thousands of temporary service workers. The Bill brings with it sweeping changes to compensation, benefits and protections for temporary workers. Temporary staffing agencies and employers that hire through such agencies bear the cost and burden of compliance. The notice and anti-retaliation provisions of the Bill take effect on May 7, 2023. The remaining provisions will take effect on August 5, 2023. Key provisions of the Bill are discussed below.

Application

The Bill applies only to temporary workers in "[d]esignated classification placement[s]," which comprise any of the following occupational categories as designated by the U.S. Department of Labor's Bureau of Labor Statistics (BLS):

- Other Protective Service Workers (Miscellaneous Manufacturers) (33-90000)
- Food Preparation and Serving Related Occupations (35-0000)
- Building and Grounds Cleaning and Maintenance Occupations (37-0000)
- Personal Care and Service Occupations (39-0000)
- Construction Laborers (47-2060)
- Helpers, Construction Trades (47-30000)
- Installation, Maintenance and Repair Occupations (49-0000)
- Production Occupations (51-0000)
- Transportation and Material Moving Occupations (53-0000)
- Any successor categories as the BLS may designate

Wage Payment/Benefits

The Bill requires that temporary workers be paid "not less than the average rate of pay and average cost of benefits" of third-party clients' employees who perform the same or substantially similar work with equal skill, effort and responsibility under

similar working conditions. Employers and staffing agencies must now determine which of their employees are in positions sufficiently analogous to the temporary workers' in order to determine compensation and benefits. Further, in an effort to ensure regular payment, the Bill also provides temporary workers with the right to collect their pay biweekly via check or direct deposit. Temporary staffing agencies must notify their temporary workers of this right. The Bill also protects temporary workers from last-minute work schedule changes and cancellations. Specifically, the Bill requires temporary staffing agencies to pay temporary workers contracted for work, but not utilized for the day, a minimum of four hours of their contractual rate of pay. In the event the agency relocates the temporary worker during the same shift, the agency must still pay the temporary worker for two hours at their rate of pay for the first assignment.

Wage Deductions

The Bill places substantial limitations on wage deductions. The Bill expressly prohibits temporary staffing agencies from deducting from a temporary worker's wages items such as check-cashing fees or expenses for conducting consumer reports, background checks or drug tests. These expenses must be borne by the employer or temporary staffing agency. Moreover, the Bill limits deductions for providing meals or equipment to their actual market value and to situations where the meals are consumed or the equipment is used by the temporary worker. Temporary staffing agencies may not require workers to purchase meals as a condition of employment. Additionally, temporary staffing agencies and employers may not charge fees to transport temporary workers to their work sites. In situations where deductions are permissible, deductions for meals and equipment cannot cause the temporary worker's wages to fall below New Jersey or federal minimum wage. New Jersey's current hourly minimum wage is $14.13 and is set to increase to $15 by 2024.

Only Certified Temporary Agencies

The Bill requires certification by the New Jersey Department of Labor and Workforce Development (DOL) for all temporary staffing agencies located, operating or transacting business in New Jersey. The Division of Consumer Affairs (DCA) will oversee enhanced certification requirements for such agencies. To be certified, temporary staffing agencies must provide proof of their employment account number in accordance with New Jersey's unemployment compensation law, proof of their valid workers' compensation insurance covering all employees at the time of certification, the number of their temporary workers that transitioned to full-time roles with the agency's clients (accounted annually) and any other information required by the DCA director. These requirements are continuous and ongoing, and failure to comply with such requirements will cause an agency's certification to be suspended or revoked. The Bill also prohibits employers from utilizing the services of noncertified temporary staffing agencies. To ensure compliance, employers must verify the certification status of contracting staffing agencies with the DOL before entering into temporary work arrangements, as well as on March 1 and September 1 of each year that the employer works with such agencies. Temporary staffing agencies also must provide proof of valid certification under the Bill to their clients at the time of entering into such work arrangements. The Bill also imposes a continuing obligation on temporary staffing agencies to notify their clients within 24 hours of any change to their certification status.

Notice and Recordkeeping Requirements

The Bill imposes additional recordkeeping and notice requirements on temporary staffing agencies. Specifically, the Bill requires that temporary staffing agencies provide a "detailed itemized statement" on temporary workers' pay stubs (or on a separate form approved by the DOL commissioner provided with employee pay stubs) that contains the following information:

- The name, address and telephone number of each third-party client (i.e., employer) for which the temporary worker worked
- The number of hours worked by the temporary worker each day during the pay period
- The rate of payment for each hour worked, including any premium rates or bonuses
- The total pay period earnings
- The amount and identification of each deduction taken from the worker's pay

The Bill also requires temporary staffing agencies to provide workers two days' advanced notice (when possible) in the event of a change in the temporary worker's schedule, shift or location. Temporary staffing agencies must also keep records regarding their temporary workers and the workers' assignments for six years and make them available to the DOL upon five days' notice. Additionally, agencies must provide temporary workers with information in their workers' primary languages detailing key terms of employment, such as hours worked and rates of pay, as well as a notice providing a toll-free telephone number operated by the DOL commissioner for temporary workers to file wage dispute complaints and other alleged violations under the Bill.

Prohibition on Restriction of Outside Employment

In an effort to promote permanent employment, the Bill also prohibits temporary staffing agencies from restricting temporary workers from accepting full-time employment positions with a permanent employer or a third-party client to whom the temporary worker has been referred for work. Staffing agencies may still charge placement fees for temporary workers who accept such positions as a result of their services with the staffing agencies, though the Bill limits the amount of the fee.

Enforcement/Retaliation Prohibited

Employers and temporary staffing agencies that violate the Bill are subject to summary enforcement actions by the DOL and the DCA. Penalties for violations under the Bill's various provisions vary based on the type and number of prior violations and range from $500 to $5,000 for each individual violation. Under the Bill, aggrieved temporary workers, on behalf of themselves and other similarly situated temporary workers, may also institute private causes of action against violating staffing agencies or third-party employers without exhausting any alternative administrative remedies. Available relief under such actions may include: in the case of unlawful retaliation, the greater of all appropriate equitable and legal relief or $20,000 in liquidated damages per incident of retaliation; for unlawful restrictions on the right of a temporary worker to accept permanent employment or employment with third-party employers, $50 per affected employee per day; and attorneys' fees and costs. Temporary staffing agencies may also institute actions against third-party employers for violations under the Bill, including for failure to reimburse wages and payroll taxes paid by the temporary agency for services performed by the agency's temporary workers. The Bill also prohibits temporary staffing agencies or employers from retaliating against temporary workers (through termination or otherwise) for exercising their newly acquired legal rights. The termination of a temporary worker by a temporary staffing agency within 90 days of the worker's exercise of any rights under the Bill raises a rebuttable presumption of retaliation.

Conclusion

This comprehensive Bill regulating temporary staffing agencies and their clients enhances protection of temporary workers and marks a shift in New Jersey law. Companies using temporary staffing agencies and the agencies themselves need to thoroughly review and understand their new obligations and should seek legal counsel to ensure compliance before the Bill takes effect in August 2023.

Authors



Heather Weine Brochin
Partner

Parsippany, NJ | (973) 966-8199

New York, NY | (212)-297-5800

hbrochin@daypitney.com



Rachel A. Gonzalez
Partner

Parsippany, NJ | (973) 966-8201

New York, NY | (212) 297-5800

rgonzalez@daypitney.com



Glenn W. Dowd
Partner

Hartford, CT | (860) 275-0570

gwdowd@daypitney.com



Francine Esposito
Partner

Parsippany, NJ | (973) 966-8275

fesposito@daypitney.com



Theresa A. Kelly
Partner

Parsippany, NJ | (973) 966-8168

tkelly@daypitney.com



James M. Leva
Partner

Parsippany, NJ | (973) 966-8416

Stamford, CT | (973) 966-8416

jleva@daypitney.com



Daniel L. Schwartz
Partner

Stamford, CT | (203) 977-7536

New York, NY | (212) 297-5800

dlschwartz@daypitney.com