

Blog Post

Temporary Workers’ Bill of Rights: New Jersey Enacts Trailblazing Protections

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New Jersey has recently trailblazed a path in the temporary staffing market by enacting a “Temporary Workers’ Bill of Rights.” In a possible harbinger for things to come nationwide – particularly in more worker-friendly states—New Jersey’s new law represents the most significant step yet that a state has taken to protect a segment of the workforce that is often overlooked by state law. Employers who dispatch and/or use temporary workers in New Jersey and around the country should take note of this new law and growing trend.

New Jersey’s Temporary Workers’ Bill of Rights

New Jersey’s Temporary Workers’ Bill of Rights (enacted February 6, 2023) creates extensive new requirements for covered “temporary help service firms,” more commonly known as temp agencies or staffing agencies. Major requirements under the new law are set forth below.

What Is a Covered Temporary Help Service Firm?

The law defines “temporary help service firms” as any “person or entity” who operates a business that employs individuals – both directly and indirectly – in order to assign them to assist the firm’s customers with their “temporary, excess or special workloads.” The law notes that such customers are those who

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pay both the workers' wages or salaries, as well as federal social security taxes and State and federal unemployment insurance, carry workers' compensation insurance as required by State law, and sustain responsibility for the actions of the workers during the course of their placement.

Who Is a Covered Temporary Laborer?

The law only covers temporary laborers who are dispatched by a temporary help service firm for "designated classification placement" as designated by the U.S. Department of Labor's Bureau of Labor Statistics. The designated classification placements include:

- Food Preparation and Serving Related Occupations;
- Building and Grounds Cleaning and Maintenance Occupations;
- Personal Care and Service Occupations;
- Construction Laborers;
- Helpers, Construction Trades;
- Installation, Maintenance, and Repair Occupations;
- Production Occupations;
- Transportation and Material Moving Occupations;
- Other Protective Service Workers; or
- Any successor categories as the Bureau of Labor Statistics may designate.

Temporary help service firms that only dispatch laborers to assignments which do not fit the categories above are not covered by the law.

Required Notice to Temporary Workers

Effective May 7, 2023, when a temporary help service firm agrees to send a person to work as a temporary laborer in a designated classification placement, the firm must provide the laborer with a

statement at the time of dispatch, in both English and the recipient's primary language, containing the following information:

1. The name of the temporary laborer;
2. The name, address, and telephone number of: (a) the temporary help service firm, or the contact information of the firm's agent facilitating the placement; (b) its workers' compensation carrier; (c) the worksite employer or third party client (meaning a person who contracts with a temporary help service firm to obtain temporary laborers); and (d) the Department of Labor and Workforce Development;
3. The name and nature of the work to be performed;
4. The wages offered;
5. The name and address of the assigned worksite of each temporary laborer;
6. The terms of transportation offered to the temporary laborer, if applicable;
7. A description of the position and whether it shall require any special clothing, protective equipment, and training, and what training and clothing will be provided by the temporary help service firm or the third party client; and any licenses and any costs charged to the employee for supplies or training;
8. Whether a meal or equipment, or both, are provided, either by the temporary help service firm or the third party client, and the cost of the meal and equipment, if any;
9. For multi-day assignments, the schedule;
10. The length of the assignment, if known; and
11. The amount of sick leave to which temporary workers are entitled under New Jersey's Earned Sick Leave Law, and the terms of its use.
12. Additionally, if the assignment is for a place where there is a strike, lockout, or other labor dispute, a firm must also provide a statement in

writing informing the temporary laborer of the dispute and the laborer's right to refuse the assignment.

For a temporary laborer who is assigned to the same assignment for more than one day, a firm need only provide notice on the first day of the assignment, provided that none of the terms listed above has been changed. However, if any of those terms are changed, further notice will be required. Although the law is silent on when such notice must be provided, firms are well-advised to do so as immediately as possible. Likewise, if a temporary laborer's schedule is changed during a multi-day assignment, firms must, to the extent possible, provide written notice of the change at least 48 hours in advance. A firm's failure to do so will place them under a burden to show that providing notice was not possible.

For these reasons, it is recommended that a firm remain in regular (if not daily) contact with a customer or third party client, or at the very least, request that the customer or third party client alert the firm to any changes prior to their institution.

Unplaced Temporary Laborers May Request Confirmation That They Sought Work

If a temporary laborer is not placed with a third party client or is otherwise not contracted to work for the day, a temporary help service firm must, upon the laborer's request, provide the laborer with a confirmation that he or she sought work. Such confirmation must be signed by an employee of the firm and include the firm's name, the laborer's name and address, and the date and time that the laborer received the confirmation.

Placed Temporary Laborers Must Still Be Paid Even If There Is No Work Available on a Particular Day

Effective August 5, 2023, covered temporary laborers who are placed at a third party client's worksite, but who are not utilized by the third party client, still must be paid for a minimum of four hours by the temporary help service firm. However if the firm is able to secure work for the laborer at another location during that same shift, then the firm is only required to pay for a minimum of two hours.

Recordkeeping Requirements

Effective August 5, 2023, temporary help service firms are required to keep the following records:

1. The name, address, and telephone number of the third party client, including each worksite, to which temporary laborers were sent by the temporary help service firm and the date of the transaction;
2. For each temporary laborer: name and address, specific location sent to work, type of work performed, number of hours worked, hourly rate of pay, and date sent.
3. The name and title of the individual or individuals at each third party client's place of business responsible for the transaction;
4. Any specific qualifications or attributes of a temporary laborer, requested by each third party client;
5. Copies of all contracts, if any, with the third party client and copies of all invoices for the third party client;
6. Copies of required employment notices provided in accordance with this law;
The amounts of any deductions to be made from each temporary laborer's compensation by either the third party client or by the temporary help service firm for the temporary laborer's food, equipment, withheld income tax, withheld contributions to the state unemployment compensation trust fund and the state disability

benefits trust fund, withheld Social Security deductions, and every other deduction;

7. Verification of the actual cost of any equipment or meal charged to a temporary laborer; and
8. Any additional information required by the commissioner.

These records must be maintained for a period of six years from their creation. Further, temporary laborers have a right to review the records described in numbers 1, 2, 3, 6, 7, and 8 above at no cost.

Itemized Statement

Effective August 5, 2023, temporary help service firms are required to provide covered temporary laborers with a detailed itemized statement on their paycheck stub or another approved form which lists the following:

1. The name, address, and telephone number of each third party client at which the temporary laborer worked;
2. The number of hours worked by the temporary laborer at each third party client each day during the pay period;
3. The rate of payment for each hour worked, including any premium rate or bonus;
4. The total pay period earnings;
5. The amount of each deduction taken from the temporary laborer's compensation made either by the third party client or by the temporary help service firm, and the purpose for which each deduction was made; and
6. Any additional information required by the commissioner.

At a covered temporary laborer's request, a firm is required to hold the laborer's daily wages and make payments to the laborer on a bi-weekly basis.

Temporary Laborers Cannot Be Restricted from Pursuing Permanent Work

Effective August 5, 2023, temporary help service firms are prohibited from restricting covered temporary laborers' right to accept a permanent position with a third party client to whom the laborer had been referred for work. Likewise, they cannot restrict a third party client from offering such employment. However, a firm may charge a placement fee under certain circumstances.

Requirement for Equal Compensation and Average Cost of Benefits

Also effective August 5, 2023, the law will require any covered temporary laborer who is assigned to work at a third party client to be paid the same average rate of pay, average cost of benefits, or the cash equivalent thereof, as permanent employees of the third party client who perform the same or substantially similar work.

Temporary Help Service Firms Must Register with the State

As of August 5, 2023, covered temporary help service firms are required to register with the Commissioner of Labor and Workforce Development before designated classification placements are made. Failure to do so will result in assessment of significant penalties against such firms, totaling \$5,000 for each violation (defined as each day of operation without proper registration).

Notably, this requirement does not apply for firms whose temporary laborers are covered under certain collective bargaining agreements.

Anti-Retaliation and Private Right of Action

Effective May 7, 2023, temporary help service firms are prohibited from retaliating against a covered temporary laborer for exercising any of their rights provided under the new law. There is a rebuttable presumption of retaliation if a firm terminates or disciplines a covered temporary laborer within 90 days of exercising a right under the law.

The law provides covered individuals with a private right of action for such a violation. In this case, aggrieved individuals are entitled to the greater of all legal or equitable relief, or liquidated damages equal to \$20,000 per incident of retaliation. They are also permitted reinstatement (where appropriate) and attorney's fees and costs.

There is a six year statute of limitations to bring such a claim.

When Does the Law Take Effect?

As detailed above, the law's notice and anti-retaliation requirements will take effect as of May 7, 2023. The remaining provisions will take effect on August 5, 2023.

Signs of Things to Come?

New Jersey is not alone in its efforts to protect temporary workers, as other states appear poised to consider similar protections. For instance, a bill of similar scope known as the "Temp Worker and Fairness Safety Act" was recently introduced in Illinois in an effort to increase already existing basic protections to temporary workers. We will continue to monitor this trend towards transparency and pay equity for temporary workers, both at the state and federal levels.

Takeaway for Employers

All covered New Jersey-based staffing agencies should immediately endeavor to obtain proper certification from the State. With the first portions of the law taking effect this coming May, now is a good

opportunity for such agencies to review the extensive requirements that they will be subjected to, and prepare forms for the notices that will be required at the time of dispatch.

For guidance on the developing legal landscape for temporary workers and other workplace issues, consult your Akerman attorney.

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