

August 7, 2023

Sweeping Changes to Illinois Law Governing Temporary Staffing Agency Workers



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[Updated Monday, August 7, 2023]

A bill significantly increasing the rights in Illinois of temporary workers and requiring temporary staffing agencies and their third-party clients to strengthen safety protocols has been signed into law by Gov. J.B. Pritzker and is now effective. The bill, which amends the Day and Temporary Labor Services Act, was passed on June 16, 2023, by the Illinois General Assembly.

The Act and Its Terms

The Act was first enacted on Jan. 1, 2006. It generally governs staffing agencies (referred to as “day and temporary labor service agencies”) who assign temporary workers (referred to as “day and temporary laborers”) to their third-party clients. For example, the Act requires staffing agencies to register with the state and pay a licensing fee. The Act specifically exempts from coverage temporary labor of a professional or clerical nature.

Equal Pay After 90 Days

One of the most significant amendments to the Act requires temporary workers assigned to work at a third-party client for more than 90 calendar days must be paid not less than the rate of pay *and equivalent benefits* as the third-party client’s lowest-paid, directly hired employee with the same level of seniority at the company and performing the same or substantially similar work on jobs requiring substantially similar skill, effort and responsibility that is performed under similar working conditions (or if no such person, then the third-party client’s lowest-paid employee with similar seniority). In lieu of providing the actual benefits, the staffing agency may pay the hourly cash equivalent of the actual cost of the benefits.

Upon request, a third-party client to which a temporary worker has been assigned for more than 90 calendar days must timely provide the staffing agency with all necessary information related to job duties, pay and benefits of directly hired employees.

Refusal of Assignment Due to a Labor Dispute

Under the amendments, staffing agencies may not send temporary workers to third-party clients where a strike, lockout or “other labor trouble” exists without providing a written statement informing the worker of the labor dispute and the worker’s right to refuse the assignment (without prejudice to receiving another assignment).

Worker Safety Protocols

The amendments also add significant new obligations relating to safety issues.

Before the assignment of a temporary worker to a worksite, *the staffing agency must*:

- At the start of any contract, inquire about the third-party client's safety and health practices, as well as hazards at the workplace where a temporary worker will be working, to assess the safety conditions, workers' tasks and the third-party client's safety program. This may include visiting the actual worksite. If, during the inquiry or anytime during the period of the contract, the staffing agency becomes aware of existing job hazards that are not mitigated by the third-party client, the staffing agency must make the third-party client aware of the hazards, urge correction and document these efforts. Otherwise, the staffing agency must remove the temporary worker from the worksite;
- Train the temporary worker for general awareness safety training for recognized industry hazards the temporary worker may encounter at the worksite. Industry hazard training must be completed in the preferred language of the temporary worker and must be provided at no expense to the temporary worker. The training date and training content must be maintained by the staffing agency and provided to the temporary worker;
- Transmit a general description of the training program, including topics covered, to the third-party client, whether electronically or on paper, at the start of the contract with that client;
- Provide the Illinois Department of Labor's (IDOL) hotline number for the temporary worker to call to report safety hazards and concerns as part of the employment materials provided to the temporary worker; and
- Inform the temporary worker to whom the worker should report safety concerns at the workplace.

The third-party client and the staffing agency are responsible for compliance with the above requirements and all other applicable employment and health and safety laws.

Before the temporary worker begins work, the *third-party client must*:

- Document and inform the staffing agency about anticipated job hazards likely to be encountered by the temporary worker;
- Review the safety and health awareness training provided by the staffing agency to determine if it addresses recognized hazards for the third-party client's industry;
- Provide specific training tailored to the particular hazards at the worksite; and
- Document and maintain records of the training and provide confirmation to the staffing agency that the training occurred within three business days.

If the third-party client changes the job tasks or the work location such that new hazards may be encountered, the third-party client must provide advance notice to both the staffing agency and the temporary worker of the job hazards not previously covered and update personal protective equipment and training for the new job tasks, if necessary. A staffing agency or temporary worker may refuse a new job task at the worksite when the task has not been so reviewed or if the temporary worker has not had appropriate training to do the new task.

A third-party client company must also allow the staffing agency to visit any worksite where the temporary worker works (or will be working) to observe and confirm the third-party client's training and information related to the job tasks, safety and health practices, and hazards.

Civil Penalties Brought by Interested Parties

Another significant change from the amendments concerns the rights of an "interested party" to bring an action under the Act. An interested party is broadly defined as "an organization that monitors or is attentive to compliance with public or worker safety laws, wage and hour requirements, or other statutory requirements." In other words, an interested party has no connection to the staffing agency, the temporary worker or the third-party client. This change could lead to a cottage industry of interested parties looking to file lawsuits under the Act.

To sue, the interested party must first file a complaint with IDOL. While IDOL will investigate and attempt to resolve the complaint (as it does with wage and hour claims), the interested party can get a right to sue letter regardless of IDOL's actions (in much the same way as the federal Equal Employment Opportunity Commission issues right to sue letters when a discrimination charge is filed). There is a three-year statute of limitations for claims brought by interested parties, and they may recover up to 10% of any

statutory penalties assessed, plus attorneys' fees and expenses.

Registration Fees and Penalties

The amendments increase annual agency registration fees to \$3,000 per agency (up from \$1,000) and \$750 (up from \$250) for branch offices.

Penalties have also increased for staffing agencies and third-party clients in violation of the statute:

- Not less than \$100 and not more than \$18,000 (up from a penalty of not more than \$6,000) for violations found in a first IDOL audit or determined by a court in a civil action brought by either the Illinois Attorney General or an interested party
- Not less than \$250 and not more than \$7,500 (up from a penalty of not more than \$2,500) for each repeat violation found by the IDOL or court within three years

For each day that a third-party client contracts with an unregistered staffing agency, it may be subject to a civil penalty of not less than \$100 and not more than \$1,500 (up from a penalty not to exceed \$500).

The Upshot

Temporary staffing agencies operating in Illinois and third-party clients who use such agencies should review the amendments and revise any policies to ensure compliance. Companies under the purview of the statute should also review their contracts to ensure that all necessary parties are registered with the IDOL and obligations under the Act are clearly covered and defined. Companies should consult counsel with any questions.

If you have any questions or want more information about the amendments to the Illinois Day and Temporary Labor Services Act, please contact a member of Gould & Ratner's [Human Resources and Employment Law Practice](#).