

New Jersey Enacts Temporary Workers' Bill Of Rights Law

Law and the Workplace on February 13, 2023

On February 6, 2023, New Jersey Governor Phil Murphy signed the [Temporary Workers' Bill of Rights](#) (A1474/S511) into law. The law only covers temporary laborers who are assigned to work by a temporary help service firm in a "designated classification placement," which includes certain workers in food preparation and service, building and grounds cleaning/maintenance, personal care and service, construction, and transportations occupations, among others.

Most of the law's provisions will take effect on August 5, 2023. However, the new hire notice requirement and non-retaliation provision will go into effect on May 7, 2023.

Below are some of the key obligations under the new law that temporary help service firms and third party clients (employers) should be aware of:

Certification Requirements

Under the law, temporary help service firms ("firms") in New Jersey will need to receive certification from the Director of Consumer Affairs Division (the "Director") to "make any designated classification placements," and it will be unlawful for a firm to operate without proper certification.

Additionally, it will be unlawful for an employer to contract with an uncertified firm. Employers utilizing firms will be required to verify with the Director (i) before entering into a contract, and (ii) on March 1 and September 1 of each year, whether a firm has the proper certification. Employers will be able to request a list of certified firms from the Director or visit the Division of Consumer Affairs' website for such information. An employer who fails to comply with this requirement is subject to civil penalties up to \$500.

Equal Pay and Equivalent Benefits Requirement

Under the law, firms and employers contracting with such firms can be held jointly and severally liable for failing to pay temporary laborers, at a minimum, the same average rate of compensation and average cost of benefits (or a cash equivalent thereof) as an employer's permanent employees who perform "the same or substantially similar work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions" at the time the temporary laborer is assigned to work for the employer.

In instances where an employer ends up not utilizing a temporary laborer after entering into a contract to do so, the firm will be required to pay the laborer "for a minimum of four hours of pay at the agreed upon rate of pay." If the temporary laborer is assigned to work at another location during the same shift, the firm will be required to pay the laborer "for a minimum of two hours of pay at the agreed upon rate of pay."

New Hire Notice Requirement

As noted above, starting on May 7, 2023, the law will require that, at the time of a temporary laborer's dispatch, a firm must provide the laborer with a form approved by the Commissioner of Labor and Workforce Development in English and in the laborer's primary language that includes 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; 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.

Itemized Statement Requirement and Wage Deductions

Firms will be required to provide each temporary laborer with a "detailed itemized statement" either on the laborer's "paycheck stub or on a form approved by the [Commissioner of Labor and Workforce Development]" that includes: "(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 made from the temporary laborer's compensation made by the temporary help service firm, and the purpose for which each deduction was made; and (6) any additional information required by the commissioner."

A firm's placement fee that they charge employers must also be included in the statement, and firms and employers can be held jointly and severally liable for failing to include this information.

Under the law, a firm will be permitted to deduct a temporary laborer's food and equipment from the laborer's wages, but the deductions cannot cause the laborer's hourly wage to fall below the New Jersey or federal minimum wage, whichever is greater. However, a firm will not be permitted to charge laborers for food they did not consume and purchasing a meal cannot be a condition of a temporary laborer's employment. If a temporary laborer fails to return reusable equipment to the firm, the firm will only be permitted to deduct the actual market value of that equipment "if the temporary laborer provides a written authorization for that deduction at the time the deduction is made."

Firms and employers will not be permitted to charge temporary laborers for: (1) transportations fees to and from a worksite, (2) consumer report expenses, (3) a criminal background check, and/or (4) a drug test. A firm also will not be permitted to charge temporary laborers for cashing their paycheck. Furthermore, the law will expressly prohibit an employer from withholding or diverting a temporary laborer's wages for any reason.

Recordkeeping Requirements

Firms will be required to keep the following records for six (6) years: "(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: the name and address, the specific location sent to work, the type of work performed, the number of hours worked, the hourly rate of pay, and the 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 all employment notices provided to temporary laborers; (7) 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 ² withheld Social Security deductions, and every other deduction; (8) verification of the actual cost of any equipment or meal charged to a temporary laborer; and (9) any additional information required by the commissioner."

Employers will be required to submit, within seven (7) days from "the last day of the work week worked by" the temporary worker, the following information to the firm: "(1) the name and address [of the temporary laborer,] (2) the specific location sent to work, (3) the type of work performed, (4) the number of hours worked, (5) the hourly rate of pay, and (6) the date [the temporary laborer was sent to work]." If an employer fails to submit this information, it will be subject to civil penalties up to \$500.

Non-Retaliation

As noted above, starting on May 7, 2023, it will be unlawful for a firm, an employer, or an agent of either of them, to retaliate against a temporary laborer for exercising their rights under the Temporary Workers' Bill of Rights. A rebuttable presumption of retaliation will arise if a firm terminates or takes disciplinary action against a worker within 90 days of the worker exercising their rights. Firms and employers are subject to civil penalties or a private cause of action if they unlawfully retaliate against temporary laborers.

If a temporary laborer's unlawful retaliation claim is successful, the worker will be entitled to: (1) select "the greater of all legal or equitable relief as may be appropriate or liquidated damages equal to \$20,000 per incident of retaliation," (2) reinstatement (if applicable), and (3) attorney's fees and costs.

Private Right of Action

Under the law, aggrieved temporary laborers will be able to institute a civil action in the Superior Court, without exhausting any alternative administrative remedy, against a firm or employer for violating the Temporary Workers' Bill of Rights. The law will also permit one or more temporary laborers to bring the civil action on their own behalf and on the behalf of other similarly situated temporary laborers. Any private action must be brought "six years from the final date of employment by the temporary help service firm or the [employer]," or six years from when the firm and the employer's contract terminates.

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