LEGAL UPDATES

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Illinois Expands Benefits and Protections for Temporary Workers

Service

Labor & Employment

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The Illinois General Assembly recently passed House Bill 2862, which amends the Illinois Day and Temporary Labor Services Act, 820 ILCS 175, to provide additional benefits and protections for temporary workers. Under the amendments, employers and staffing agencies are required to provide temporary workers – other than those "clerical or professional" in nature – with pay and benefits equal to certain directly hired employees after 90 days of employment.

The amendments become effective upon Governor Pritzker's signature or by August 15, 2023, if the bill is not signed or vetoed. The bill places several new requirements on both staffing agencies and their third-party clients and increases penalties for violations of the act. The act also requires communication and cooperation between agencies and their clients to ensure compliance and share necessary information.

Pay rate

First, the amendments to the act require that a temporary worker assigned to a client for more than 90 calendar days must be paid at least the rate of pay and equivalent benefits as a directly hired comparative employee. Under the act, a comparative employee is an employee with the same level of seniority and performing the same or substantially similar work under similar working conditions. If there is no comparative employee, then the temporary worker must be paid at least the rate of pay and equivalent benefits as "the lowest-paid directly hired employee" with the closest level of seniority.

The act does not define "equivalent benefits," but an agency may pay a temporary worker the hourly cash equivalent of the benefits required under the act. Clients are required to provide the agencies, upon request, with "all

necessary information related to the job duties, pay, and benefits of directly hired employees necessary" for the agency to comply.

Safety

Next, the act imposes a requirement on staffing agencies to "inquire about the client company's safety and health practices and hazards at the actual workplace" where the temporary employee will be working. The agency must also provide safety training to the temporary worker for "recognized industry hazards" that the worker may encounter while at the client's worksite. The training must include instruction on how to report safety concerns and provide temporary workers with the Illinois Department of Labor's hotline number for reporting safety concerns. The agency must present a general description of this training to the client company at the start of the agency's contract with the client company.

The client company also has additional safety obligations to temporary workers under the act. Before a temporary employee begins working for a client company, the company must document and inform the agency about any anticipated job hazards and review the safety and health training provided by the agency to ensure it addresses the recognized hazards for the relevant industry. A client company must also provide the temporary worker with specific training "tailored to the particular hazards at the client company's worksite," and provide the staffing agency with confirmation that such training has occurred.

"Labor trouble" notice

Under the new amendments, staffing agencies must give written notice to a temporary employee who is placed "where a strike, a lockout, or other labor trouble exists." The notice must inform the temporary worker of the labor dispute and the worker's right to refuse the assignment and receive a different assignment without prejudice.

Increased penalties

Finally, the amendments to the act increase penalties for violations and expand who may file suit against staffing agencies and/or client companies if they violate the act. The act has been subject to enforcement through the Illinois Department of Labor and civil actions brought by aggrieved employees. Now, the amendments create a cause of action for any "interested party" to file suit against offending agencies and companies as well. The act defines an "interested party" as an "organization that monitors or is attentive to compliance with public or worker safety laws, wage and hour requirements, or other statutory requirements." An "interested party" who prevails in a civil action will receive 10% of any statutory penalties assessed, plus expenses and attorneys' fees.

Any agency or client company found by the department or determined by a court in a civil action to have violated the act will now be subject to a civil penalty of not less than $100 and not more than $18,000 for a first violation. Each repeat violation within three years will subject an offending agency or client company to a penalty of not less than $250 and not more than $7,500. Each violation for each temporary worker and for each day the violation continues will constitute a separate offense.

In addition, client companies who contract with an agency that is not properly accredited under the act are subject to a civil penalty of not less than $100 and not to exceed $1,500. Each day a third-party client contracts with an unregistered agency will constitute a separate offense.

What this means to you

Both staffing agencies and client companies should review their obligations under the amendments to ensure they are able to comply with the act immediately.

Contact us

If you have any questions regarding this update, please contact Terry Potter, Allison Minicky, or your Husch Blackwell attorney.