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Significant Changes to the Illinois Day and Temporary Labor Services Act Impact Employers

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08.22.2023

On August 4th, Illinois Governor Pritzker signed a bill which amends the Illinois Day and Temporary Labor Services Act (Act). This new law impacts both temporary labor agencies (Agencies) and Third-Party Clients (Clients) which utilize them. Along with the change to the Act, on August 7, 2023, the Illinois Department of Labor (IDOL) issued Emergency Rules to implement the changes to the Act. The IDOL has also issued Proposed Permanent Rules, and the public comment period runs through October 2, 2023.

Equal Pay Requirement

The amendments require that temporary laborers who are assigned to a Client for more than 90 calendar days receive "equal pay for equal work", which includes benefits. Under the Act, the laborer must be paid at least as much as the Client's lowest paid directly hired employee with the same level of seniority at the company and performing the same or substantially similar work. If a comparative employee is not available, then the laborer must be paid at least the same amount as the lowest paid direct hired employee with the closest level of seniority. The statute does not define if those are days worked or days worked over a 90-day period of continuous service. The IDOL initially responded that is after 90-days worked.

As it relates to the benefits requirement, the IDOL's Emergency Rules define "benefits" as "health care, vision, dental, life insurance, retirement, leave (paid and unpaid), other similar employee benefits, and other

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Practice Areas

Discrimination, Retaliation and Harassment

Occupational Safety and Health (OSHA)

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employee benefits as required by State and federal law." Agencies may pay the equivalent of the actual cost of benefits in lieu of providing the benefits to laborers. Thus, Agencies will likely be reaching out to Clients to inquire about the benefits the Client provides to permanent employees. Some staffing agencies provide benefits to their workers. It is unclear and the IDOL has not yet opined on how to credit those benefits towards the amounts due the temporary workers.

Information Needed from the Client Company

Because the Act now requires laborers to receive equal pay and benefits if they are assigned to (work at) a Client's site for more than 90 calendar days, as noted above, Agencies will need to obtain information from the Clients. The Act requires clients to timely provide the staffing agency with all necessary information related to job duties, pay, and benefits of directly hired employees necessary. Failure to do so is a violation of the Act.

Safety Requirements

A Client must now disclose safety hazards to Agencies prior to a laborer being assigned to a worksite. The Client must notify the Agency of the Client's health and safety practices and disclose all known hazards. A staffing agency must also inquire about the Client's safety and health practices and hazards in the workplace to assess the safety conditions and safety program prior to a laborer's assignment to a worksite. Agencies must provide general awareness safety training for recognized industry hazards—this training must be free and in the laborer's preferred language. Types of hazards that must be reported if present on the job site include: hazards which necessitate the use of PPE, fall hazards, electrocution hazards, hazards of being struck by objects, machinery and chemical related hazards, and emergency action plans. The training must include emergency evacuation and shelter-in-place procedures. If the Client changes the laborers job tasks or work locations, and new hazards may be encountered, it must inform the laborer and the Agency before the laborer begins the new tasks, and also must update the laborers training if necessary. Records must also be maintained to show compliance with the training requirement and the content of the training. The Department of Labor has opined that the Agency is legally responsible to provide the training.

The Agency also must make the Client company aware of any job hazards that are not mitigated by the Client once they become aware of them. Agencies must urge the Client to correct these hazards, as well as document these efforts. Agencies must provide laborers with information on how they can report safety concerns at client locations, including providing them with the IDOL hotline number for reporting safety

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concerns.

Job Disputes

The amendments also allow laborers the right to refuse an assignment at a Client location where there is a labor dispute. The Agency must provide a written statement to the laborer if the Client location is engaged in a strike, lockout or other labor trouble. This also requires Agencies and Clients to share information as needed. The Act now provides for a penalty if the notice is not provided to laborers in this instance.

Interested Party Litigation

The amendments allow for an interested party, meaning an organization that monitors or is attentive to compliance with public or worker safety laws, to initiate a civil action against an Agency or Client upon reasonable belief that a violation of the Act has occurred. The interested party must first file a complaint with the IDOL describing the violation. The IDOL will then send a notice of the complaint to the named parties, who have a right to contest or cure the alleged violations within 30 days of receipt of the complaint. The IDOL may also issue a "right to sue" to the interested party, of which they may initiate a civil action for penalties within 180 days.

Increased Penalties

An Agency or Client can be penalized for first violations of the Act not less than $100 and not more than $18,000, which is up from $6,000 previously. Additionally, repeat violations can cost not less than $250 and not more than $7,500, which is up from approximately $2,500. Further, penalties to Clients who contract with an Agency that is not registered with the state have increased to up to $1,500 per day.

Next Steps

Agencies and Clients should both prepare for the process in which information will be shared regarding benefits, pay, work conditions, and training practices in order to comply with the new requirements under the Act. Training practices and protocols should also be reviewed to ensure compliance with the Act.

There are many unanswered questions about the details in implementing these amendments. Be sure to reach out to a Laner Muchin attorney if you have any questions about the new changes and what this means for your workforce.