Governor J.B. Pritzker signed into law HB 2862 (Amendment) on August 4, 2023, which amends the Illinois Day and Labor Services Act (Act) by adding new equal pay obligations and safety and training requirements for employers who hire temporary workers and for staffing agencies that place them—all of which are effective immediately.

The Amendment includes several significant changes. It mandates equal pay for equal work performed by temporary workers who are assigned to a third-party client for more than 90 days. The Amendment requires staffing agencies to inquire into those third-party clients' safety trainings, health practices, and work site hazards to assess worker tasks and safety conditions. It also requires temporary workers to be informed of any work site "labor trouble" at or before the time of placement, and it greatly expands both the penalties and the number of persons who may file suit under the Act. The most important changes are outlined below.

Equal Pay and Benefits

The Amendment includes a new wage-matching requirement of which both staffing agencies and employers who hire temporary workers must be keenly aware. Temporary workers assigned to a client for more than 90 days must be provided with at least the same rate of pay and equivalent benefits as the lowest paid "comparative employee," which the Amendment specifies as a directly hired employee performing the same or substantially similar work under similar conditions and at the same level of seniority. When no comparative employee exists, temporary workers are to be provided with at least the rate of pay and equivalent benefits of the lowest-paid, directly hired employee.

Temporary service agencies may pay the hourly cash equivalent of the cost of workplace benefits in lieu of providing the benefits themselves, and clients are required to furnish staffing agencies with "all necessary information related to the job duties, pay, and benefits of directly hired employees" to facilitate compliance with the Act.

Safety Inquiry and Training Requirements

Under the Amendment, before a staffing agency assigns a temporary worker, it must "inquire about the client company's safety and health practices and hazards" at the work site where the temporary worker will be assigned in order "to assess the safety conditions, workers tasks, and the client company's safety program." Additionally, staffing agencies are required to provide general workplace safety training, which must include information on how to report workplace safety concerns and the hotline number for reporting safety hazards to the Illinois Department of Labor, before assigning temporary employees to work sites. Client companies, in turn, must document and inform staffing agencies of any anticipated job hazards; review staffing agencies' safety trainings to ensure they address hazards that exist within client companies' industries; develop and provide specific training tailored to the client companies' industries; and track trainings to ensure they are administered in a timely fashion.

"Labor Trouble" Notices

Staffing agencies are also now required to inform temporary workers at or before an assignment, in writing, of "a strike, a lockout, or other labor trouble" that exists at the work site. These notices must be presented in a language that the worker understands and must inform temporary workers that they have the right to refuse the assignment and receive a different assignment.

Expanded Standing and Enhanced Civil Penalties

Previously, enforcement of this Act was conducted exclusively through directly aggrieved parties and the Illinois Department of Labor. Under the Amendment, however, enforcement has been expanded to include any "interested party," which may now also file suit against an offending agency or company. The Amendment 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." When such "interested part[ies]" prevail, they will receive 10% of any assessed statutory penalties along with expenses and attorneys' fees.

The Amendment also increases statutory penalties and creates new risk of registration revocation. Initial violations of the Act can incur penalties ranging from $100 to $18,000, and ensuing violations can incur penalties ranging from $250 to $7,500. The Amendment counts each day that a violation occurs, and each

individual a violation occurs against, as a separate violation for purposes of measuring such penalties. Further, the Illinois attorney general may now request that a court revoke a staffing agency's registration for violations of this Act. Client companies are also at risk of violations stemming from contracting with unaccredited staffing agencies.

A Growing Trend

The Amendment joins changes in other states, including New Jersey, California, and Massachusetts, albeit with some differences. In general, these changes to temporary worker requirements involve expansions in notice requirements for temporary workers and incentivize greater communication and shared responsibility between staffing agencies and the clients they assist.

- **Massachusetts** requires temporary workers to be informed of various aspects of their assigned work site before dispatch, including all relevant contact information, a description of the role, pay information, start and end times, whether meals will be provided at the work site, and details regarding transportation to work sites.
- **California** creates joint employer liability between a staffing agency and a client when the client cannot cover temporary workers' wages and the staffing agency knew or should have known that the client had insufficient funds.
- **New Jersey**, providing the closest standards to those under the Amendment, includes an equal pay mandate similar to that under the Amendment. Violations of the New Jersey law, however, are capped at $1,000 for notice violations and $5,000 for wage violations.

Practical Steps for Employers and Staffing Agencies

Certain key aspects of the Act remain unclear, including whether 90 days of part-time work constitute "assignment" under the Act, what types of organizations constitute "interested parties," and whether there is any restriction on the matching pay and benefits where a client company has no comparative employees. Regulatory guidance or judicial decisions must answer these questions.

Regardless, both staffing agencies and employers who use their services should promptly review any workplace safety trainings to ensure that they comply with the new requirements under the Amendment. Additionally, staffing agencies should review their contracts and communications with third-party clients to make sure that they have all the information they need to meet the equal pay obligations and inform temporary workers of industry-specific risks. In general, these changes require greater communication between staffing agencies and client companies. Given the litany of new obligations and costly consequences for noncompliance, staffing agencies and employers that use their services are advised to consult with experienced labor and employment counsel to ensure compliance with the Amendment.

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