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# TOP 7 TAKEAWAYS FROM NEW JERSEY'S SWEEPING 'TEMPORARY WORKERS' BILL OF RIGHTS'

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New Jersey is set to strengthen protections for temporary workers in a sweeping bill known as the Temporary Workers' Bill of Rights. The measure would codify unprecedented measures for the state's temporary workforce and impose what the New Jersey Business and Industry and Association has described as "burdensome" requirements on temporary help firms and their third-party clients. Although Governor Murphy conditionally vetoed the bill on September 22, he did express his overall support for the measure with some recommended changes that the state legislature is now considering. For now, all eyes are on New Jersey as the bill is finalized and the state prepares to lead the movement to create affirmative protections for temporary laborers. Here's what you need to know and what you can do to prepare for the bill to ultimately become law.

[Editor's Note: Governor Murphy signed the bill into law on February 6, 2023, and you should note that changes were made to the bill before finalization. [You can read our update here.](#)]

## A Brief Background

After an unusual vote was held in August 2022, the New Jersey State Senate approved the [Temporary Workers' Bill of Rights](#). This bill aims to provide robust protections to temporary workers, who the legislature found are typically underpaid compared to regular employees and far less likely to receive employer-sponsored retirement and health benefits. The bill provides certain protections to temporary

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laborers and imposes new requirements on temporary help service firms and third-party clients of those firms.

The bill defines a temporary help service firm as a business that assigns its employees to a client firm to promptly respond to the client's temporary, excess, or special workloads. Under the bill's definition, in addition to paying the workers' wages or salaries, the temporary help service firm pays federal social security taxes and state and federal unemployment insurance, carries workers' compensation insurance as required by state law, and sustains responsibility for the workers' actions while they render services to the firm's clients.

On September 22, Governor Murphy released a 21-page [conditional veto statement](#), expressing his overall approval of the bill, including the affirmative protections for temporary laborers, which Murphy said "will promote greater fairness in the industry, help address discriminatory labor practices, and promote racial and gender pay equity." However, Murphy recommended several revisions to the bill, including for the legislature to "hone the definition of temporary laborers to more clearly delineate the occupations covered by the bill, tailoring the application of the bill to those positions in the workforce at greatest risk of exploitation." The governor also recommended amendments to delay the bill's implementation an extra 90 days to give state officials more time to train staff and otherwise prepare to carry out the bill.

## **Key Takeaways for Employers**

Although revisions are expected by the legislature, including what workforce is considered "at greatest risk of exploitation," the following key measures are likely to remain unchanged. Here are the seven biggest takeaways that you need to know about this pending legislation:

### **1. Requires Equal Pay and Equivalent Benefits – Which May Raise ERISA Preemption Arguments**

The bill would require temporary help service firms to pay temporary workers the same average rate of pay as a standard employee of the third-party client who performs the same or substantially similar work.

Notably, the bill goes one step further to require that temporary workers also receive "equivalent benefits." The

legislature has not shed any light on how this would be conceivably possible, as enrollment of health insurance benefits or participation in retirement plans are governed by the third-party client's individual plans – and the temporary worker may not be eligible under the terms of those plans. Importantly, the Employee Retirement Income Security Act (ERISA) is a federal law that enforces minimum standards for most retirement and health plans in the private sector, which may raise viable preemption arguments. We anticipate future litigation on this issue if the Temporary Workers' Bill of Rights becomes law as is, because it may leave third-party clients unable to comply with this measure through no fault of their own.

## **2. Requires Some Compensation Even If No Work is Available at the Worksite**

Even if there is no work available at the third-party client's worksite where the temporary worker was assigned to work that day, the bill would require the firm to pay the worker for a minimum of 4 hours at the agreed upon rate. If the temporary laborer is able to work at another location during the same shift, they must still be paid for a minimum of two hours at the agreed upon rate of pay.

## **3. Implements New Wage Notice Requirements That Would Be Among the Most Robust in the Nation**

The bill would also require detailed wage notices to be provided to temporary workers in writing in English and in the language identified by the worker as their primary language. The form would include the following information:

- The name of the temporary laborer;
- 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;
- The name and nature of the work to be performed;
- The wages offered;
- The name and address of the assigned worksite;

- The terms of transportation offered to the temporary laborer;
- A description of the position and whether it shall require any special clothing, protective equipment, and training; 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;
- 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;
- The schedule for multi-day assignments,;
- The length of the assignment; and
- The amount of sick leave temporary workers are entitled under New Jersey's Earned Sick Leave laws and how to use it.

If and when this provision goes into effect, it is anticipated that a template form would be created by the Commissioner of Labor and Workforce Development.

#### **4. Implements New Wage Payment Requirements with the Elimination of Certain Deductions**

On top of the detailed wage notice requirement, temporary help service firms would also be required to provide each temporary worker with a detailed itemized statement on their paycheck stub (or on a form approved by the Commissioner of Labor and Workforce Development) including:

- The name, address, and telephone number of each third-party client at which the temporary laborer worked during the pay period;
- The number of hours worked by the temporary laborer at each third-party client during the pay period;
- The rate of payment for each hour worked, including any premium rate or bonus;
- The total pay period earnings; and

- The amount of each deduction from the paycheck made either by the third-party client or the temporary help service firm with information as to why the deduction was made.

Placement fees must also be disclosed.

Notably, the Temporary Workers' Bill of Rights also prohibits certain wage deductions, such as for transportation, background checks (including for conducting any consumer report, criminal background check or drug testing), and for cashing paychecks. Costs of meals and equipment can still be deducted (and itemized in the paystub). However, these deductions cannot cause a temporary laborer's hourly wage to fall below minimum wage. To implement this type of wage deduction, the temporary worker would first be required to provide a written authorization for the deduction of the actual market value of reasonable equipment, creating an additional burden on both the temporary help service firm and third-party client.

#### **5. Implements New Recordkeeping Requirements with Penalties to Third-Party Clients for Not Supplying Certain Timely Information to the Temporary Help Service Firms**

The recordkeeping requirements would also be substantial. Under the Temporary Workers' Bill of Rights, a temporary help service firm would be required to keep certain records for a period of six years, such as the name, address, and telephone number of the third-party clients, copies of all contracts with third party clients, and copies of all employment notices provided to the temporary laborers.

A temporary help service firm would also be required to keep the race, ethnicity, and gender information of each temporary laborer or applicant that is provided by the laborer or applicant. This is likely to be reviewed when audited by the state or for use in future lawsuits.

Additionally, the onus is on third-party clients to remit the following information to the temporary help service firm no later than seven days following the last day of the work week worked by the temporary laborer:

- The name and address of the temporary laborer;
- 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.

Failure for the third-party client to do so could result in civil penalties for each violation.

## **6. Creates Anti-Retaliation Rights and a Rebuttable Presumption of Retaliation**

The bill makes clear that it would be unlawful for either a temporary help service firm or third-party client to retaliate against a temporary laborer for exercising their rights under the Temporary Workers' Bill of Rights. In fact, firing or disciplining a temporary laborer within 90 days of exercising their rights would raise a rebuttable presumption of retaliation. This rebuttable presumption will likely result in more litigation against both temporary help service firms and third-party clients, particularly considering it eliminates an initial burden of proof by the aggrieved employee.

If a temporary worker is successful in alleging unlawful retaliation, they would be entitled to the greater of all legal or equitable relief as may be appropriate or liquidated damages equal to \$20,000 per incident of retaliation, reinstatement (if appropriate), and attorneys' fees and costs.

## **7. Creates a Private Right of Action Against Both Temporary Help Service Firms and Third-Party Clients and Potential Joint and Several Liability**

The bill would also allow an aggrieved temporary worker to institute a civil action in the Superior Court — with no requirement to pursue other legal remedies first — against both the temporary help service firm and the third-party client. Notably, the firm and the client could be held joint and severally liable for payment of wages or any violation of this measure. The statute of limitations is six years from the final date of employment.

The bill also expressly provides that an action can be brought by one or more temporary laborers on behalf of themselves and similarly situated workers. This means employers will likely face an increase in not only single plaintiff but also class action lawsuits, which can be costly.

Additionally, the commissioner is empowered to deny, revoke, or refuse to renew any registration of a temporary help service firm that has been determined through a separate enforcement process to be operating in violation of any law.

### **What Should Employers Do?**

The Temporary Workers' Bill of Rights is not yet law, and Governor Murphy has recommended a 90-day delay from when the bill is passed until it takes effect to give employers some beathing room.

If you manage a temporary help service firm or are a third-party client that contracts with such firms, you should start developing a game plan to implement these likely changes, particularly the wage and notice requirements. You should also review your servicing or contracting agreements to ensure compliance with the new law once it's approved.

Furthermore, third-party clients must also review their benefit policies to ascertain if temporary laborers are even eligible as recipients of those plans. We anticipate further litigation regarding this very issue if the bill becomes law, as is.

We will continue to monitor events and provide updates as warranted, so make sure [you are signed up to receive Fisher Phillips' Insights directly to your inbox](#) to get the latest information about the future of the Temporary Workers' Bill of Rights. If you have any questions regarding how to position your organization to comply with the expected requirements, please consult your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [New Jersey office](#).