



Top 8 Takeaways from New Jersey's Sweeping “Temporary Workers’ Bill of Rights”

Insights

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New Jersey is leading the movement to create affirmative protections for temporary laborers. On February 6, Governor Murphy signed the “Temporary Workers’ Bill of Rights,” which strengthens protections for temporary workers. The law provides robust protections to temporary workers, who the State found to be typically underpaid compared to permanent workers and far less likely to receive employer-sponsored retirement and health benefits. Here’s what you need to know about this new law, which will go into effect in 90 to 180 days, as discussed below.

Procedural History

In August 2022, the New Jersey State Senate approved an initial version of the Temporary Workers’ Bill of Rights. Thereafter, on September 22, Governor Murphy released a 21-page conditional veto statement that expressed his overall approval of the bill, including the affirmative protections for temporary laborers, which he stated, “will promote greater fairness in the industry, help address discriminatory labor practices, and promote racial and gender pay equity.”

However, he 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.” Governor Murphy 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.

The Legislature accepted Governor Murphy’s recommended changes and an updated version of the bill passed in the Assembly on October 3, 2022, and in the Senate on February 2. Now that the Governor signed the bill into law on February 6, **most provisions will take effect August 5. However, the provisions regarding new hire notices and prohibiting retaliation are effective May 7, 2023.**

Definitions of Key Terms Under the Law

A “**temporary worker**” is defined as a person who contracts for employment with a temporary help service firm.

A **“temporary help service firm”** means any person or entity who operates a business which consists of employing individuals directly or indirectly for the purpose of assigning the employed individuals to assist the firm’s customers in the handling of the customers’ temporary, excess, or special workloads, and who, in addition to the payment of wages or salaries to the employed individuals, 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 actions of the employed individuals while they render services to the firm’s customers.

Unfortunately, there is no statutory definition of **“temporary labor.”** An earlier version of the bill defined it as “work performed by a temporary laborer at the business of (or for) a third-party client of a temporary help service firm, the duration of which may be specific or undefined, pursuant to a contract or understanding between the temporary help service firm and the third-party client.” However, the final version passed by lawmakers and signed by Governor Murphy removed this language, leaving a void in the law that has taken effect. It remains uncertain whether an agreed-upon definition will be developed by state regulators or whether businesses will be left with an uncertain pathway when it comes to this issue.

8 Biggest Takeaways for Employers

Here are the eight biggest takeaways that you need to know about the Temporary Workers Bill of Rights:

1. Limits the Application of the New Law to Positions Within a “Designated Classification Placement”

The Temporary Workers’ Bill of Rights does not apply to all temporary worker positions, but rather those positions that the Legislature has considered to be “at greatest risk of exploitation.” Therefore, these protections cover only those temporary workers who are assigned by a temporary help service firm to perform work in the following occupational categories as designated by the Bureau of Labor Statistics of the United States Department of Labor:

- Other Protective Service Workers (33-9000)
- Food Preparation and Serving Related Occupations (35-0000)
- Building and Grounds Cleaning and Maintenance Occupations (37-0000)
- Personal Care and Service Occupations (39-0000)
- Construction Laborers (47-2060)
- Helpers, Construction Trades (47-30000)
- Installation, Maintenance, and Repair Occupations (49-0000)
- Production Occupations (51-0000)
- Transportation and Material Moving Occupations (53-0000)

transportation and material handling occupations (see 8000,

- Or any successor categories as the Bureau of Labor Statistics may designate

2. Requires Equal Compensation of Pay and Average Cost of Benefits, or the Cash Equivalent Thereof, of Third-Party Client Employees

The Temporary Workers' Bill of Rights requires temporary workers, as designated above, to be paid the same average rate of pay as a permanent employee of the third-party client who performs the same or substantially similar work for the employer at the same time the temporary worker is assigned to the position. It also goes one step further to require that temporary workers also receive the "average cost of benefits, or the cash equivalent thereof."

3. Requires Some Compensation Even If There Is No Work 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 temporary worker must be paid by the temporary help service firm for a minimum of four hours of pay at the agreed upon rate. If the temporary laborer is able to work at another location during the same shift, the temporary laborer must still be paid for a minimum of two hours of pay at the agreed upon rate of pay.

4. Implements New Wage Notice Requirements That Would Be One of the Robust Notices in the Nation

The Temporary Workers' Bill of Rights requires detailed wage notices to be provided to temporary workers in writing in English and in the language identified by the temporary worker as their primary language. This requirement goes into effect on May 7. The form would need to 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, if applicable;
- 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;

- 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;
- For multi-day assignments, the schedule;
- The length of the assignment, if known; and
- The amount of sick leave to which temporary workers are entitled to under New Jersey's Earned Sick Leave laws and how to use it.

It is anticipated that the Commissioner of Labor and Workforce Development will create a template form for use.

5. Implements New Wage Payment Requirements with the Elimination of Certain Deductions, Including for Transportation, Background Checks, or Check Cashing

On top of the detailed wage notice requirement, temporary help service firms will soon 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.

6. 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 are also substantial. Under the Temporary Workers' Bill of Rights, a temporary help service firm will soon be required to keep certain records for a period of 6 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.

There is also an onus 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.

7. Institutes Anti-Retaliation Rights and Creates a Rebuttable Presumption of Retaliation for Any Disciplinary Action Taken Within 90 Days of a Temporary Worker's Exercise of Rights

The Temporary Workers' Bill of Rights also makes clear that, beginning May 7, it is 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, the termination or disciplinary action by a temporary help service firm against a temporary laborer within 90 days of exercising their rights would raise a rebuttable presumption of retaliation. This rebuttable presumption will likely result in an increase of 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.

8. Creates a Private Right of Action Against Both Temporary Help Service Firms and Third-Party Clients, Who Can Be Held Joint and Severally Liable

The Temporary Workers' Bill of Rights also allows an aggrieved temporary worker to institute a civil action in the Superior Court, with no exhaustion requirement, against both the temporary help service firm and the third-party client. The temporary help service firm and third-party 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 law also expressly provides that an action can be brought by one or more temporary laborers on behalf of themselves and other temporary laborers similarly situated. Employers will now 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 who has been determined through a separate enforcement process to be operating in violation of any law.

What Should Employers Be Doing?

If you manage a temporary help service firm or are a third-party client that contracts with such firms who are designated in the categories set forth above, you should start developing a game plan of how to implement these changes, particularly the wage and notice requirements which go into effect in May. Temporary help service firms and third-party clients should also review their servicing or contracting agreements to ensure that compliance with the new law.

Fisher Phillips will continue to monitor events and provide updates as warranted, so make sure you are signed up to receive Insights directly to your inbox to receive the latest information about the Temporary Workers' Bill of Rights and other employment issues. If you have any questions regarding how to position your organization to comply with the requirements, please consult your Fisher Phillips attorney, the authors of this Insight, or any attorney in our New Jersey office or on our PEO and Staffing Industry Team.

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