



5 Key Takeaways for New Jersey Employers and Staffing Agencies as State Issues Proposed Regulations for Sweeping Temp Labor Law

Insights

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New Jersey employers that rely on temporary labor are one step closer to fully understanding the contours of the groundbreaking temp worker rights law that recently took effect now that state regulators have released proposed regulations covering the law. The New Jersey Department of Labor and Workforce Development (NJDOLE) issued proposed rules on July 21 that aim to further shape the Temporary Workers' Bill of Rights law that recently took full effect. What are the five key takeaways for employers and staffing agencies, and what should you do while waiting for the rules to take effect?

Quick Background

As we previously reported, New Jersey Governor Phil Murphy signed the Bill of Rights law into effect on February 6. It established new protections for over 127,000 temporary laborers employed in certain occupations – including food preparation and serving; production, construction; personal care and service; transportation and material moving; building and grounds cleaning and maintenance; installation, and maintenance and repair as well as other protective services workers.

It took effect in two phases – the first on May 7, and the second on August 5. The law is now in full effect.

The Bill of Rights is intended to protect the labor and employment rights of temporary laborers. The state lawmakers who passed the law cited to studies that show that temporary laborers find themselves vulnerable to unpaid wages, failure to pay for all hours worked, minimum wage and overtime violations, unsafe working conditions, and unlawful deductions from pay for meals, transportation, equipment, as well as discriminatory practices.

The law is somewhat comprehensive and requires a full review to determine coverage and overall employer obligations. We recommend you review our [Top 8 Takeaways from New Jersey's Sweeping "Temporary Workers' Bill of Rights"](#) Insight published at the time the law was passed.

5 Key Takeaways of the Proposed Rules

While the proposed regulations and accompanying FAQs do not yet carry the full weight of law, they provide useful insight into some compliance requirements that were unclear to the staffing industry and those employers hiring temporary employees since the law was enacted. They shed light on how temporary staffing agencies and their employer clients can comply with the Bill of Rights (noting these rules have not been finalized and may change). Here are your top five key takeaways:

1. **Application:** Under the proposed rules, the Bill of Rights applies to **all** protected temporary laborers assigned to work within the State of New Jersey, and New Jersey residents placed **outside** of New Jersey. Therefore, it is important for temporary staffing agencies that place employees in New Jersey, New Jersey residents anywhere, New Jersey employers hiring temporary employees from out-of-state staffing agencies, and out-of-state employers hiring New Jersey residents from a temporary staffing agency to determine whether the Bill of Rights may be applicable to them.
2. **Calculating the “average rate of pay and average cost of benefits”:** Under the proposed regulations, third-party clients are required to provide staffing agencies with a “listing of the hourly rate of pay and cost per hour of benefits for each employee of the third-party client who the third-party client determines would be a **comparator**” Benefits include all “fringe benefits” (e.g. health, dental, pension, vacation, holidays, personal time, life insurance, long term disability insurance) with the exception being the benefits that the third-party client is required by law to its employees (e.g., New Jersey Paid Sick Leave). It is the responsibility of the staffing agency to use this information to calculate the average rate of pay and average cost of benefits.
3. **Determining comparators:** In their current form, the regulations put the onus on employer clients to ascertain the potential comparator to a temporary laborer by identifying to the staffing agency all employees doing “substantially similar work” to the temporary laborer. Job title alone is not controlling. The employer client must analyze the actual duties and consider factors including whether the performance of the job requires equal skill, effort, and responsibility and is performed under similar working conditions. Functions and duties between the temporary laborer and the comparator need not be identical. All comparators must be identified, even those employees who earn addition pay based upon seniority or merit.
4. **Must Use DOL’s Approved Forms:** Separate from the proposed regulations, the Commissioner has approved three forms. Two apply to temporary staffing agencies and one applies to employer clients.
 - Form MW-23 is the “Temporary Laborer Assignment Notification” form, which staffing agencies must give to temporary laborers before their assignment in English and in the language identified by the temporary laborer as their primary language. The form must be provided in a manner appropriate depending upon whether the assignment was accepted, in-person at the staffing agency’s office, or remotely by telephone, text, email, or other electronic exchange. If the temporary laborer is assigned to the same assignment for more than one day (a multi-day assignment), the staffing agency is only required to provide the form on the first day of the assignment and on any day that any of the terms listed on the form

are changed.

- Form MW-24S is the Temporary Laborer Itemized Statement of Earnings, Hours, & Deductions which staffing agencies must complete and provide to temporary laborers at the time of payment of wages.
 - Form MW-51S is the Temporary Laborer Single-Day Work Verification which employer clients must complete and provide to temporary laborers, assigned to them for a **single day**. Employer clients are not required to use this form for temporary laborers who have multi-day assignments.
5. **Placement Fees:** A staffing agency cannot restrict the right of an employer client to offer employment to a temporary laborer or restrict the right of a temporary laborer to accept a permanent position for any other employment. The staffing agency may charge a placement fee to an employer client. The proposed rules attempt to correct the lack of clarity in the law as to how placement fees should be calculated by providing step-by-step instructions.

What's Next?

The public comment period for the proposed regulations is open through September 2023. Employers and staffing agencies wishing to offer feedback on the proposed rules should consult with legal counsel.

It's important to note that the regulations remain proposed – and likely won't be finalized until the end of the year at the earliest. And there is a chance the law gets sidetracked by litigation before the rules take effect.

Temporary staffing industry group members who are impacted by the new law have challenged the constitutionality of the Bill of Rights in New Jersey's federal district court. Although the Court noted that the State's unwillingness to consider a brief non-enforcement of the new rules to fairly assess and plan for implementation was "disappointing," it nonetheless found that the provisions are constitutional and enforceable. This decision is now on appeal, and we will continue to monitor the proceedings. For the time being, however, you should proceed as if the law will remain on the books.

What Should Staffing Companies and their Employer Clients Do?

The Bill of Rights provides for joint liability for both the staffing agencies and third-party clients for the payment of wages as well as fines and penalties. In order to avoid legal liability, you should consider taking some best practice steps:

- Staffing agencies and their employer clients should review, and if necessary, amend their servicing or agreements to ensure compliance with this new law and ensure they are familiar with who has what responsibility.
- Review the Frequently Asked Questions document released by the State to better understand the proposed rules.

- 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 and its proposed rules.

Conclusion

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](#) or on our [PEO and Staffing Industry Team](#).

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