

ILLINOIS STAFFING AGENCIES AND CLIENTS SHOULD PREPARE FOR EQUAL PAY RULES: 4 STEPS TO TAKE NOW

Insights
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Illinois passed significant amendments to its Day and Temporary Labor Services Act last year, and key requirements are about to take effect next month. The state law heightens equal pay rights for day and temporary workers and adds new safety oversight responsibilities for both labor service agencies and their clients. While the new safety rules are already in effect, covered organizations need to get ready for equal pay requirements to start on April 1. Here are the key areas you should review to ensure your policies and practices are up to date and four compliance steps to consider taking now.

New Compliance Obligations

Under the new requirements, day and temporary laborers who are assigned to a client by a labor service agency for more than 90 calendar days must receive – at a minimum – equal pay and benefits to the client’s lowest paid comparator employee. Notably, the 90-calendar-day calculation doesn’t begin until April 1, so the earliest that workers will be affected is the end of June.

A comparator employee has the same level of seniority and performs the same or substantially similar work under similar working conditions requiring substantially similar skill, effort, and responsibility. If there is no comparator employee, the day or temporary laborer must receive at least equal compensation and benefits to the lowest paid employee with the closest level of seniority.

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As an alternative to providing equal benefits, the labor agency may pay the day or temporary laborer the cash equivalent of the client's actual cost of the comparator employee's benefits.

Upon request from the agency that has assigned a laborer to work for the client for at least 90 days, the client must timely provide the agency with all necessary information to comply with the act. So, clients should be prepared to share data related to employees' job duties, pay, and benefits. Failure to provide the requested information to the labor agency constitutes a notice violation by the client, carrying damages up to \$500 for each violation.

Check Compliance with Existing Rules

Last year's amendments to the Day and Temporary Labor Services Act included some additional changes employers should be aware of and already complying with:

Workplace Safety and Training Requirements

Both the agency and the client are required to provide some safety oversight. Before assigning a day or temporary laborer to a worksite, the labor agency must:

- Inquire about the client's safety and health practices and hazards at the actual workplace where the day or temporary laborer will be working to assess the safety conditions, workers tasks, and the client-company's safety program. If the labor agency becomes aware of existing job hazards, it must make the client aware, urge them to fix it, and document such efforts.
- Provide general awareness safety training to laborers for industry hazards they may encounter at the worksite. The labor agency must also provide a general description of the training to the client at the start of the contract period.
- Provide the laborers with the Illinois Department of Labor's hotline number for reporting safety hazards and concerns.
- Tell the laborers who they should report safety concerns to at the workplace.

Similarly, before a day or temporary laborer begins work, the client must:

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- Document and inform the labor service agency about anticipated job hazards likely encountered by the laborer.
- Review the safety and health awareness training provided by the labor agency to determine if it addresses recognized hazards for the industry.
- Provide specific training tailored to the particular hazards at the client company's worksite.
- Document and maintain records of site-specific training and provide confirmation that the training occurred to the labor agency within three business days of providing the training.
- Inform the laborer and agency if the job tasks or work conditions change and the laborer may encounter new hazards, and if necessary, update personal protective equipment for the new job tasks.
- Provide worksite specific training to the laborer and allow them to visit any worksite where they will be working to observe and confirm the training and information related to the worksite's job tasks, safety and health practices, and hazards.

In addition, the labor agency or laborer may refuse a new job task when the task has not been reviewed with the laborer or if the laborer has not had appropriate training to do the new task.

Right to Refuse Assignment to a Labor Dispute

Before a day and temporary labor service agency sends a laborer to a place where a strike, lockout, or other labor trouble exist, the agency must provide, at or before the time of dispatch, a statement in writing informing the laborer of the dispute and their right to refuse the assignment without losing the opportunity to receive another assignment. Failure to provide each piece of information constitutes a separate and distinct notice violation. This statement must also be provided in a language the laborer understands.

Uptick in Registration Fees and Penalties

The Illinois Department of Labor's annual registration fee for day and temporary labor service agencies has increased to \$3,000 per agency and \$750 for each branch office.

Both the labor agency and client that violate the act are subject to the following increased penalties:

- Between \$100 and \$18,000 for violations found in the first audit by the Illinois Department of Labor or determined by a court in a lawsuit brought by the Attorney General or an interested party (such as an organization that monitors compliance with worker safety or wage and hour laws).
- Between \$250 and \$7,500 for each repeat violation found by the Department or court within three years.
- A client may be subject to a penalty between \$100 and \$1,500 for each day it contracts with a labor agency that is not registered with the Illinois Department of Labor.

A separate and distinct violation may be found for each laborer and each day a violation continues.

4 Steps to Consider Taking Now

1. Labor service agencies and their clients should ensure their policies and procedures address the significant equal pay requirements that begin on April 1.
2. You should also ensure your safety and job hazards training addresses the significant changes that took effect last year.
3. Clients should be prepared to handle requests from service agencies for information related to employees' job duties, pay, and benefits and should develop a plan for gathering and providing such information.
4. You should consider consulting with experienced legal counsel regarding the business adjustments that may be necessary.

Conclusion

We will continue to monitor any further developments and provide updates on these and other labor and employment issues, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Chicago office](#).