

ILLINOIS AMENDS TEMP WORKER LAW TO INCREASE BUSINESS OBLIGATIONS: 4 THINGS YOU NEED TO KNOW

Insights
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Illinois Governor J.B. Pritzker recently agreed to amend the state's groundbreaking temp worker law to increase obligations for businesses and create additional compliance requirements. The August 9 action officially amends the Day and Temporary Labor Services Act (DTLSA) to revise equal pay and benefits standards, create more notice and paperwork obligations, and clarify staffing worker rights during labor disputes. What do staffing agencies and their clients need to know? Here are the top four takeaways from the recent amendments.

1. Detailed Employment Notices to Day or Temporary Laborers

Prior to the amendments, temporary labor staffing agencies were required to provide an employment notice to a temporary laborer when assigning work. The DTLSA now places additional requirements on temporary labor staffing agencies to provide employees with an employment notice that includes:

- The name of the day or temporary laborer
- The name and nature of the work to be performed, including a list of basic job duties and the equipment, protective clothing, and training that are required for the task
- The wages offered

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- The name and address, including county, of the destination of each day or temporary laborer
- The terms of transportation
- Whether a meal or equipment (or both) are provided
- The seniority and hourly wage of the comparator being used to determine the wage or the standard occupational classification used to determine the wage if the temporary laborer is entitled to the equal pay requirements.

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2. Confirmation To Applicants Who Seek Work But Are Not Placed

The amendments to the DTLSA require labor staffing agencies to provide applicants with an application receipt if the applicant seeks a work assignment and is not placed to work for that day. The Illinois Department of Labor will provide an approved form that must be used to provide the receipt. However, the receipt should include:

- The name and location of the day and temporary labor service agency and branch office
- The name and address of the applicant
- The date and the time that the applicant sought the work assignment
- The manner in which the applicant sought the work assignment
- The specific work sites or type of jobs sought by the applicant, if applicable

3. Clarification on Rights Related to Labor Disputes

Prior to sending a day or temporary laborer to a place where a strike, lockout, or work stoppage exists because of a labor dispute or where a picket, bannering, or handbilling, exists because of a labor dispute, a day and temporary labor service agency must provide the day or temporary laborer with a written statement at or before the time of dispatch informing them of the labor dispute and their right to refuse the assignment without prejudice to receiving another assignment. The amendments define "labor dispute" as any controversy concerning wages, hours, terms, or conditions of employment.

4. Equal Pay For Equal Work Requirements

The amendments to the DTLSA establish many new requirements for the “equal pay for equal work” provision. Originally, the equal pay requirement applied to temporary laborers who performed work for 90 calendar days. Now, equal pay is required if a temporary laborer is assigned to work and performs work at the same third-party client for more than 720 hours in a 12-month period.

Equal pay can be calculated in one of two ways.

- You can use the **Bureau of Labor Statistics data** as the basis for compensation for workers with the same or substantially similar job classifications.
- Or you can use the **client’s employee compensation**.
- Is there a directly hired comparator employee of the third-party client with the same or substantially similar level of seniority at the company who performs the same or substantially similar work (looking at skill, effort, responsibility, and working conditions)? If so, you can comply by paying them **not less than the straight-time hourly rate of pay or hourly equivalent of the lowest paid directly hired comparator employee** of the third-party client who is entitled to overtime under the Fair Labor Standards Act (FLSA) with the same or substantially similar level of seniority and performing the same or substantially similar work.
- If there isn’t, you can comply by paying them **not less than the straight-time hourly rate of pay or hourly equivalent of the lowest paid directly hired employee** of the third-party client who is entitled to overtime under the FLSA with the closest level of seniority at the third-party client.

Further, third-party clients are not required to provide comparator pay information until the worker has worked for more than 720 hours within a 12-month period and the temporary labor service agency requests this information.

Moreover, the amendments modify the former “equivalent benefits” requirement to “substantially similar benefits,” and clarifies that temporary labor service agencies may pay “the hourly average cash equivalent of the actual cost of the benefits” the third-party client provides to its directly hired employees in lieu of benefits.

Note, however, an Illinois federal court pressed pause back in March as to the equal benefits provisions – but not the equal pay provisions – while it hears the challenge brought by a group of staffing associations and agencies. The court’s order blocking the Illinois Department of Labor from taking any action to enforce the equivalent benefits provisions currently remains in effect. [You can find more information on this court ruling here.](#)

What Should You Do?

[Senate Bill 3650](#) is just the latest chapter in the ongoing drama related to this controversial new law. Both day and temporary labor service agencies and their clients should review and ensure their policies, procedures, and safety and job hazards training address the significant changes affected by the amendments. You should consider consulting with appropriate legal counsel regarding the business adjustments that may be necessary. [If you need a reminder about the DTLSA, you can click here to read our summary when the law was first passed.](#)

Conclusion

We will continue to monitor any further developments and provide updates on these and other labor and employment issues affecting employers, 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](#) or in our [PEO and Staffing Industry Group](#).