



LEGAL UPDATE Feb 6, 2023

Months-Long Saga Ends as NJ Governor Murphy Signs First-of-its-Kind Temporary Worker Bill Into Law

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Seyfarth Synopsis: *NJ Governor Phil Murphy signed a bill coined the “Temp Worker Bill of Rights” into law. The Law gives temporary workers the right to certain information in their native language, including where they will be working, the kind of work to be performed, sick time allocation, the pay rate, and schedule. Additionally, temporary workers will be guaranteed to earn wages, which at a minimum after accounting for deductions are equivalent to permanent employees where the temporary worker performs the same or substantially similar work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.*

New Jersey drew the nation’s interest on Monday, February 6, 2023 ([press release](#)), when Governor Murphy signed a new Law that is sure to garner the attention of staffing agencies in the Garden State. That Law, coined the “New Jersey Temp Worker Bill of Rights,” places heavy burdens on the many New Jersey based staffing agencies and their customers by requiring an array of new terms of employment and worker notifications. The new measure focuses on temporary workers in “designated classification placement[s],” including grounds cleaning and maintenance, personal care and service occupations, and construction trades, among several others. It excludes agricultural crew leaders, or employees who are secretaries or administrative assistants. The Law provides that it “shall take effect on the 180th day after the date of enactment, except that sections 3 and 10 shall take effect on the 90th day after the date of

enactment, provided however that the commissioner and director may take such anticipatory action as deemed necessary prior to the effective date.”

The most prominent new requirement is that staffing agencies must pay temporary workers the same as their permanent counterparts under certain circumstances. It is the nation’s first temporary worker equal pay mandate. The law provides that any temporary worker must be paid the same average rate of pay *and* equivalent benefits (or equivalent cash payment thereof) if the temporary worker performs the same or substantially similar work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions. Benefits can be tricky; staffing agencies tend to contract with several different clients at once and this law will cause temporary workers’ benefits to fluctuate unpredictably. What is predictable is that requiring the same average rate of pay and benefits will have the effect of boosting temporary worker pay above permanent workers. Many of the Law’s provisions have specific penalties that are calculated *per violation*. Thus, any potential damages could grow out of hand quickly.

Additionally, temporary staffing agencies must provide each dispatched worker with over eleven different points of information. That information includes, but is not limited to, the length of the assignment, the amount of sick leave available, the terms of transportation, the wages offered, schedule, whether meals will be provided, and a description of the position. This information must be provided in English and the language identified by the employee as the employee’s primary language. Furthermore, staffing agencies maintain a duty to promptly update temporary workers of any changes. In the event of a scheduling change, the staffing agency must give 48 hours advance notice when possible. Failure to do so could result in a civil penalty. Violations of these provisions shall be subject to a civil penalty of not less than \$500 and not to exceed \$1,000 per violation.

The new Law also takes aim at deductions and seek to ensure temporary workers receive minimum wage. The Law takes issue with certain deductions for equipment and food that have the effect of dropping workers’ wages below the minimum wage. Now, temporary staffing agencies cannot deduct costs for items like meals or safety equipment if it will cause the temporary worker to earn less than the New Jersey minimum wage of \$14.13 per hour.

Burdens of complying with the Law do not fall squarely on staffing companies. There are joint employer implications that customers need to be aware of as well. Businesses that contract with staffing agencies could be jointly and severally liable for any violation of the

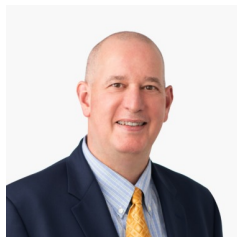
law. Indeed, given that the statute of limitations is six years, all businesses will need to be wary of this sprawling new measure.

The new Law is chock-full of additional provisions, including restrictions on interference with a temporary worker's acceptance of a regular/permanent position with a third party client or permanent employer. A staffing agency may charge a placement fee, but it cannot exceed the equivalent of the total daily commission rate the temporary help service firm would have received over a 60-day period, reduced by the equivalent of the daily commission rate the temporary help service firm would have received for each day the temporary laborer has performed work for the temporary help service firm in the preceding 12-months.

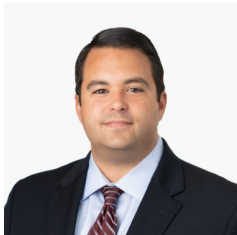
In sum and substance, the law has so many nuances, requirements, and restrictions, that some view it as threatening the very existence of temporary agencies by creating an extremely difficult regulatory framework. One has to wonder whether the intent of the legislation was to fairly regulate temporary agencies, or whether the real desire is to incapacitate them by making regular/permanent employment the more attractive option. As has been the case with other recent New Jersey legislation under the Murphy administration, this new law poses enormous hurdles for employers – in this case, the operators of temporary agencies and also their clients.

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