

SEPTEMBER 13, 2024 | STATE & LOCAL TRENDS

Crossover Alert: Illinois Day and Temporary Labor Services Act Imposes Various Labor Law and Workplace Safety Requirements on Host Employers and Staffing Agencies.

By: [Ashley D. Mitchell](#) & [Aaron R. Gelb](#)

On August 3, 2023, Illinois Governor J.B. Pritzker signed several amendments to the Illinois Day and Temporary Labor Services Act ("Act") into law. The Act provides protections to temporary workers ("laborers") who are assigned to perform work at third party client worksite of a labor service agency ("agency"). The Act as amended requires that agencies provide notices to laborers, equal pay for equal work, registration with the Illinois Department of Labor, the maintenance of safety and health practices, and laborer training. Although some provisions of the Act were challenged by temporary staffing agencies and trade associations, the Director of the Illinois Department of Labor is only enjoined from enforcing one provision.

Agency Notice Requirements

Laborers have a right to refuse, without retribution, assignment to a third-party client worksite where a strike, a lockout, or other labor dispute exists. The agency must provide a written notice to the laborer informing them of the labor dispute and their right to refuse the assignment without prejudice to receiving another assignment. 

When the Agency pays wages to laborers, they must simultaneously provide the laborer with a detailed itemized statement, on a form approved by the IL Department of Labor, that includes the following:

- The name, address, and telephone number of each third-party client where the laborer worked;
- The number of hours worked by the laborer at each third-party client each day during the pay period;
- The rate of payment for each hour worked, including any premium rate or bonus;
- The total pay period earnings; and
- All deductions made from the laborer's compensation made by either the third party client or the agency, and the purpose for which the deductions were made.

Equal Pay for Equal Work

The Act as amended requires that laborers who work at a third-party client for more than 90 calendar days

receive the same pay and benefits as the comparable lowest paid directly hired employee of the third-party client. The directly hired comparator should have the same level of seniority; perform the same or substantially similar work on jobs which require substantially similar skill, effort, and responsibility; and work under similar working conditions as the laborer. The third-party client must provide agencies with "all necessary information related to job duties, pay, and benefits of directly hired employees" so that agencies can comply.

On November 22, 2023, temporary staffing agencies and trade associations filed suit against the Director of the Illinois Department of Labor. Shortly thereafter, Plaintiffs filed a motion for a preliminary injunction alleging that the Equal Pay for Equal Work provision violated ERISA. The district court judge found that plaintiffs did not have the standing to challenge the third-party client requirements. Accordingly, plaintiffs could only challenge the provisions requiring agencies to pay equivalent benefits. In granting plaintiffs' preliminary injunction, the court ordered that the Director of the Illinois Department of Labor is enjoined from taking any action to enforce the equal benefits provision of the Act. Because plaintiffs lack standing to address third party client obligations, third party clients are still required to provide agencies with "all necessary information related to job duties, pay, and benefits of directly hired employees."

Registration with the Department of Labor

Agencies that operate or transact business in the state of Illinois must register with the Illinois Department of Labor. As part of the registration process, agencies must show that they have an employee account number from the Department of Employment Security for the payment of unemployment insurance contributions and proof of valid workers' compensation insurance.

Third party clients cannot enter a contract for the employment of laborers with any agency that is not registered. Under the Act, third party clients have an affirmative duty to verify the agency's status before entering a contract as well as bi-annually on March 1 and September 1.

Safety and Health Practices and Laborer Training

Before an agency assigns a laborer to a third-party client worksite, the agency must:

- Inquire about the third-party client's safety and health practices and hazards at the worksite where the laborer will be working to assess the safety conditions, laborer's tasks, and the third-party client's safety program;
- If the agency learns of existing job hazards that are not addressed by the third-party client, the agency must make the third-party client aware, urge the third-party client to correct it, and document these efforts. If the agency's efforts prove futile, the agency must remove the laborer from the third-party client's worksite;
- Give the laborer general safety awareness training that covers recognized industry hazards that the laborer may be exposed to at the third-party client worksite. This training must be completed in the preferred language of the laborer;
- Maintain records that show the training date and training content provided to the laborer;
- Provide a general description of the training, including topics covered, to the third party client;
- Provide the laborer with the Illinois department of labor's hotline number for the laborer to call and report safety hazards and concerns; and

- Inform the laborer who to report safety concerns to at the third-party client worksite.

Before a laborer begins work at the third-party client worksite, the third-party client must:

- Document and inform the agency about anticipated job hazards the laborer will encounter;
- Review the safety and health training provided by the agency to determine whether it addresses recognized hazards for the third-party client's industry;
- Provide safety training that addresses hazards that are specific to the third-party client's worksite;
- Maintain records of the site-specific safety training; and
- Provide confirmation to the agency, within 3 business days of when the site-specific safety training was provided, confirmation that the training occurred.

If the third-party client changes the job tasks or work location of the laborer, and the laborer is exposed to new hazards, the third-party client must inform the agency and the laborer and provided updated training, if necessary, before the laborer undertakes the new tasks.

Implications for Agencies and Third-Party Clients

To ensure compliance with the Act, Agencies would be well advised to:

- Review notices provided to laborers at the time of their assignment;
- Review laborers pay stubs;
- Confirm their registration with the department of labor; and
- To the extent that they have not already done so, inquire about the safety and health practices at third party client worksites and train laborers accordingly.

Likewise, third party clients of labor services agencies would be well advised to:

- Confirm agencies' registration with the Illinois Department of Labor is current ahead of the upcoming September 1 deadline;
- Document and inform agencies about anticipated job hazards likely encountered by laborers;
- Review the safety and health awareness training provided by agencies to determine whether it addresses recognized hazards for the client company's industry;
- Provide specific training tailored to the particular hazards at the third-party client's worksite; and
- Document and maintain records of site-specific training, and provide confirmation that the training occurred to agencies within three business days of providing the training.

It is also worth noting that under the Act, third party clients "shall share all legal responsibility and liability for the payment of wages under the Illinois Wage Payment and Collection Act and the Minimum Wage Law." These laws regulate exempt and non-exempt employment classifications, overtime pay requirements, minimum wage, compensable time, and wage payment requirements. Although, the Director of the Illinois Department of Labor is enjoined from enforcing the equal pay for equal work provision of the Act, both agencies and their third-party clients should ensure that laborers are paid in compliance with the Illinois Wage Payment and Collection Act and the Minimum Wage Law.

