

New Jersey Enacts ‘Bill of Rights’ for Temporary Workers

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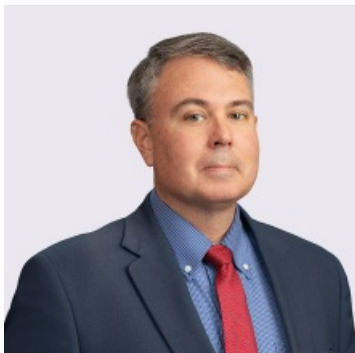


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New Jersey Governor Phil Murphy has signed into law the [‘Temporary Workers’ Bill of Rights](#),” providing temporary workers significant rights regarding their employment through temporary help service firms. Notice obligations for such firms, wage and hour requirements, and anti-retaliation provisions are among the new protections that will apply to at least 127,000 temporary laborers.

Most of this first-of-its-kind legislation will take effect on *August 5, 2023*; however, certain provisions affecting newly hired employees and the anti-retaliation provisions will take effect on *May 7, 2023*.

Who Is Protected?

The Bill of Rights applies to temporary laborers that contract for employment with a temporary help service firm. “Temporary help service firm” is defined as any person or entity who employs individuals for the purpose of assigning those individuals to assist the firm’s customers in the handling of temporary, excess, or special workloads and which is responsible for the payment of wages or salaries, federal social security taxes, state and federal unemployment insurance, and workers’ compensation insurance.

Additionally, applicability of the new law is limited to temporary laborers in a designated classification placement. “Designated classification placement” means an assignment of a temporary laborer by a temporary help service firm to perform work in any of the following occupational categories (as designated by the U.S. Bureau of Labor Statistics):

- 33-90000 Other Protective Service Workers;
- 35-0000 Food Preparation and Serving Related Occupations;
- 37-0000 Building and Grounds Cleaning and Maintenance Occupations;
- 39-0000 Personal Care and Service Occupations;
- 47-2060 Construction Laborers;
- 47-30000 Helpers, Construction Trades;
- 49-0000 Installation, Maintenance, and Repair Occupations;
- 51-0000 Production Occupations;
- 53-0000 Transportation and Material Moving Occupations; or
- Any successor categories as the Bureau of Labor Statistics may designate.

Notice Requirements

The Bill of Rights requires temporary help service firms to provide a temporary laborer in a designated classification placement, at the time of dispatch, a written statement in English and the employee’s primary language containing the specific, itemized information regarding the terms and conditions of the engagement on a form approved by the state Department of Labor.

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This notice must state whether the assignment can be accepted at the temporary help service firm's office or remotely by telephone, text, email, or other electronic exchange. Further, the notice must be given on the first day of the assignment and any day that any of the terms listed in the notice are changed.

Additionally, the temporary help service firm must give the temporary laborer written notice of any change in the schedule, shift, or location of a multi-day assignment within 48 hours.

If a temporary laborer is not placed with a third-party client or otherwise contracted to work on a specific day, the temporary help service firm, upon request, must provide the laborer with a written confirmation containing specific information that the laborer sought work.

Under the new law, temporary help service firms must post in a place easily accessible to all employees, and in each location of the firm, a notice regarding the Bill of Rights and a notice with a number for individuals to file complaints. The notice must be posted in English and any other language generally understood in the locale of the firm.

Temporary laborers cannot be sent to any designated classification placement where there is a strike, lockout, or other labor dispute without providing a statement in writing at the time of dispatch informing them of the dispute and their right to refuse the assignment.

Any temporary help service firm that makes designated classification placements and violates the notice requirements of the Bill of Rights will be subject to a fine of not less than \$500 and not more than \$1,000 for each violation.

Recordkeeping Requirements

The Bill of Rights requires temporary help service firms to maintain specific records of temporary laborers, including, but not limited to, the following:

- The name, address, and telephone number of the third-party client, including each worksite to which the temporary worker was sent;
- The date of the transaction;
- The name, address, specific location sent to work, type of work performed, the number of hours worked, the hourly rate of pay, and the date sent for each temporary laborer. All this information must be sent to the temporary help service firm by the third-party client no later than seven days following the last day of the workweek worked by the temporary laborer;
- The name and title of the individual(s) at each third-party client's place of business responsible for the transaction; and
- The amounts of any deductions to be made from each temporary laborer's compensation, whether by the temporary help service firm or the third-party client, for the laborer's food, equipment, withheld income tax, withheld contributions to the state unemployment compensation trust fund and the state disability benefits trust fund, withheld Social Security deductions, or any other deduction; and every other deduction.

The records must be maintained for at least six years from their creation and must be available for review or copying by a temporary laborer or their representative within five days of a written request for inspection. Additionally, records showing the number of hours billed to a third-party client for each individual temporary laborer should be made available within five days of a written request.

Failure of a third-party client to maintain and remit accurate time records to a temporary help service firm is a violation by a third-party client unless it, for reasons beyond its control, is prevented from submitting the time records. Each violation of the recordkeeping requirements is subject to a civil penalty of \$500 and is not a basis for suit against the temporary help service firm.

Wage and Hour Requirements

Whenever wages are paid to a temporary laborer, the temporary help service firm must provide the laborer a detailed itemized statement that includes the name, address, and telephone number of each third-party client at which the temporary laborer worked; the number of hours worked by the temporary laborer at each third-party client each day during the pay period; the rate of pay for each hour worked, including premium rates or bonuses; the total pay period earnings; and the amount and purpose of each deduction made from the temporary laborer's compensation.

The firm also must provide each laborer an annual earnings summary not later than February 1 of each year. The firm must give laborers notice of the availability of the annual earnings summary, either by including a notice at the time of wage payment or by posting a notice in a conspicuous place in the public reception area.

If the temporary laborer works only a single day, the third-party client must provide the laborer a work verification form at the end of the workday. This form must contain the date, the temporary laborer's name, the work location, and the hours worked on that day. Any third-party client that violates this requirement is subject to a fine up to \$500 for the first violation and up to \$2,500 for a second or subsequent violation. Each violation for each laborer for each day the violation continues is considered separate and distinct violation.

If a laborer is contracted to work at a third-party client's worksite but is not utilized by the third-party client, the laborer will be paid by the temporary help service firm for a minimum of four hours of pay at the agreed-upon rate. The firm can avoid this by contracting for the laborer to work at another location during the same shift. Even then, the firm must pay the laborer a minimum of two hours of pay at the agreed-upon rate.

A temporary help service firm cannot restrict the right of a temporary laborer to accept a permanent position or restrict the right of a third-party client to offer such employment to a temporary laborer. A firm may charge a placement fee to a third-party client for employing a temporary laborer, but such fee cannot exceed the equivalent of the total daily commission rate the firm would have received over a 60-day period, reduced by the daily commission rate the firm would have received for the laborer's work in the preceding 12 months.

Each year, the firm must report the number of temporary laborers placed in a permanent position in the preceding 12 months, as well as the percentage those permanent placements represent among the total number of temporary laborers

contracted by the firm during the period. Temporary laborers who are assigned to work for third-party clients may not be paid less than the same average rate of pay and equivalent benefits as a permanent employee of the third-party client performing the same or substantially similar work. Violations of these requirements subject the firm to penalties of up to \$5,000.

Upon request by the laborer, the firm must hold all daily wages of the laborer and make weekly, bi-weekly, or semi-monthly payments in a single check or, if requested by the laborer, through direct deposit. The right to request weekly, bi-weekly, or semi-monthly checks must be posted in a conspicuous place at any firm that makes daily wage payments.

A temporary help service firm must not charge any temporary laborer for cashing a check issued by the temporary help service firm and cannot charge any temporary laborer for conducting any consumer report, criminal background check, or drug test. If a firm deducts the cost of meals or equipment, these deductions cannot cause the laborer's hourly wage to fall below the state or federal minimum wage. The firm may deduct the actual market value of reusable equipment provided to the temporary laborer if the laborer fails to return such equipment, so long as the laborer provides a written authorization for that deduction at the time it is made. The firm cannot charge a laborer for any meal not consumed, and if charging for meals consumed, the firm cannot charge more than the actual cost of the meal. Purchasing a meal cannot be a condition of employment for a temporary laborer.

Restrictions on Transportation To, From Worksites

A temporary help service firm cannot charge a temporary laborer for the cost of transporting the laborer to the designated worksite. Further, the firm is jointly and severally liable for the conduct and performance of any person who transports a temporary laborer from the firm to a worksite, unless the transporter is a public mass transportation system, a common carrier, the temporary laborer is providing their own transportation, or the transporter is selected exclusively and at the sole choice of the laborer. If a temporary help service firm provides transportation or refers a temporary laborer to a transporter, it cannot allow unsafe or improperly equipped transportation to be used. Temporary help service firms are not subject to this requirement if the vehicle used is public transportation, a common carrier, the temporary laborer's personal vehicle, or a temporary laborer's personal vehicle used to carpool other temporary laborers.

If a temporary laborer is transported to a worksite, the temporary help service firm or third-party client must also provide transportation back to the point of hire at the end of each workday, unless otherwise requested by the laborer.

Retaliation Is Prohibited

Neither a temporary help service firm nor a third-party client may retaliate against any temporary laborer for exercising rights granted under the Bill of Rights. If a temporary laborer is terminated within 90 days of the laborer's exercise of protected activity, a rebuttable presumption the termination was retaliatory will be established.

Protected activity under the Bill of Rights includes:

- Making a complaint to a temporary help service firm, to a third-party client, to a

coworker, to a community organization, before a public hearing, or to a state or federal agency that rights guaranteed by the Bill of Rights have been violated;

- Instituting any proceeding under or related to the Bill of Rights; or
- Testifying or preparing to testify in an investigation or proceeding under the Bill of Rights.

In addition to monetary penalties, an aggrieved laborer can bring a private cause of action to recover any damages stemming from the retaliatory termination. When determining the amount of the penalty imposed because of retaliation, the commissioner of Labor and Workforce Development will consider factors such as the history of previous violations, the seriousness of the violation, the good faith of the employer, and the size of the employer's business. Any penalty imposed, either by the commissioner or through a private right of action, may be recovered with costs.

Registration Requirements

Each temporary help service firm is required to register with the commissioner and should provide proof of payment of unemployment insurance contributions and workers' compensation insurance at that time. The registration is accompanied by an annual \$2,000 fee and an additional \$750 fee for each branch office or other location where the firm regularly contracts with temporary laborers. At the time of registration, the firm's principal executive officer must certify under oath that they have reviewed the registration form and it is true to the best of their knowledge and that the firm complies with the requirements of the Bill of Rights. Firms that fail to register will be assessed a \$5,000 fine for each violation. Each day during which the firm operates without properly registering is considered a separate violation.

Moreover, a firm must obtain a surety bond issued by a surety company admitted to do business in New Jersey. The bond must have a principal sum of at least \$200,000, and a copy of the bond should be filed with the commissioner.

Third-party clients cannot enter into a contract for the employment of a temporary laborer with a firm that has not registered as required by the Bill of Rights. While a temporary help service firm is required to provide proof of valid registration at the time of entering into a contract, the burden is on the third-party client to verify a temporary help service firm's registration status.

Enforcement

The Bill of Rights allows the commissioner to levy administrative penalties between \$500 and \$1,000 against those who violate the Bill of Rights. Additionally, failure of a third-party client to maintain and remit accurate time records to the temporary help service firm constitutes a violation of the new law and is punishable by a fine up to \$500 for each violation. Importantly, it is not a violation for a third-party client to fail to provide time records in accordance with the above provisions. Failure of a third-party client to remit any information required by the Bill of Rights is not a defense to a violation, and thus, the burden of ensuring a third-party client's compliance with the Bill of Rights falls on the temporary help service firm.

In addition to administrative penalties instituted by the commissioner, a person aggrieved by a violation of the Bill of Rights by a temporary help service firm or third-

party client can institute a private cause of action in Superior Court. Temporary laborers may bring an action on behalf of themselves and other temporary laborers similarly situated, and more than one temporary laborer may be joined as a party to the action. In other words, class action lawsuits by aggrieved temporary laborers are permitted. A temporary help service firm aggrieved by a violation of the Bill of Rights by a third-party client also can institute a private right of action in Superior Court.

The statute of limitations for a temporary worker to bring a claim under the Bill of Rights is six years from the final date of employment by the temporary help service firm of the third-party client, or six years from the date of the termination of the contract between the firm and the third-party client.

Compliance Steps

- Covered employers should ensure they have up-to-date notices drafted and are ready to comply with all notice and posting requirements.
- Employers should plan to implement the proper recordkeeping processes to ensure compliance with the Bill of Rights.
- Employers that qualify as a temporary help service firm should register with the commissioner.
- All employers that qualify as a temporary help service firm or a third-party client should review existing contracts and policies to ensure they are prepared to timely comply with the requirements of the new law.

Jackson Lewis attorneys can assist with any aspect of compliance or if you have any questions regarding the provisions or applicability of the new law. For assistance, please contact your Jackson Lewis attorney.

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