

Illinois Bill Mandating Temp Workers Receive ‘Equal Pay’ Compared to Direct Hires Sent to Governor

By Neil H. Dishman & Emma R. Graham

June 30, 2023

Meet the Authors



Neil H. Dishman

Principal

(312) 803-2530

Neil.Dishman@jacksonlewis.com



Emma R. Graham

Associate

(312) 803-2544

Emma.Graham@jacksonlewis.com

Related Services

National Compliance and Multi-State Solutions

Staffing and Independent Workforce

Wage and Hour

Workplace Safety and Health

Workplace Training

A bill that substantially amends the Illinois Day and Temporary Labor Services Act (DTLSA) to impose expansive new duties on Illinois staffing agencies, and on all employers who rely on temporary and day laborers, has been sent to the governor for signature. Governor J.B. Pritzker is widely expected to sign the bill ([HB 2862](#)) into law.

Significant changes the Temp Worker Fairness and Protection Act (TWFPFA) would make to DTLISA include the addition of an equal pay provision requiring temporary workers to be paid as much as comparable direct-hire employees, expanded protections for day and temporary laborers, and mandated safety training and notice obligations for temporary staffing agencies and their third-party clients.

HB 2862 is scheduled to become effective July 1, 2023, or upon the governor’s signature, whichever is later.

“Equal Pay for Equal Work”

The TWFPFA adds an “equal pay for equal work” provision, providing that a day or temporary laborer assigned to work at a third-party client for *more than 90 calendar days* must be paid the same rate of pay and equivalent benefits as the lowest paid directly hired employee of the client with the same level of seniority and performing comparative work.

Comparative work means work that requires “substantially similar skill, effort, and responsibility.” If no such comparator exists, the laborer must be paid the rate of pay and equivalent benefits of the lowest paid employee of the client with the closest level of seniority.

The staffing agency may pay the hourly cash equivalent of the “actual cost” of benefits in lieu of providing benefits required under the TWFPFA; however, the TWFPFA provides no guidance as to how to calculate this cash equivalent.

On the request of the staffing agency, third-party clients must timely provide all necessary information regarding the job duties, pay, and benefits of its directly hired employees to facilitate the staffing agency’s compliance. Failure to do so constitutes a notice violation. An aggrieved party may recover compensatory damages, an additional amount up to \$500 for each violation, and attorneys’ fees and costs.

Right to Refuse Assignment Due to Labor Dispute

The TWFPFA grants day and temporary laborers the right to refuse assignment to a third-party client experiencing a strike, lockout, or other labor dispute. Staffing agencies must provide written notice informing the laborer of the labor dispute and their right to refuse the assignment without prejudice to receiving another assignment. Notice must be given at the time of or before the assignment.

Safety Training and Notice Obligations

The TWFPA establishes certain safety training and notice obligations for temporary staffing agencies and their clients.

Before a temporary employee is assigned to a worksite, the staffing agency must:

- Ask the third-party client about its safety and health practices and hazards at the worksite;
- Inform the client of existing hazard(s) of which it becomes aware, urge the client to correct the hazard(s), and document these efforts, and remove the temporary worker from the client's worksite if the hazard(s) are not corrected;
- Provide "general awareness safety training" to the temporary worker for recognized industry hazards the worker may encounter at the assignment;
- Provide a general description of the general awareness safety training to the third-party client;
- Provide temporary workers with the Illinois Department of Labor's hotline to report safety concerns; and
- Inform temporary workers to whom they can report safety concerns at the workplace.

The amendments impose training and notice obligations on third-party clients, as well. Before the temporary worker begins work with the client, the client must:

- Document and inform the temporary staffing agency about anticipated job hazards likely to be encountered by the laborer;
- Review the training provided by the agency; and
- Provide specific training tailored to the particular hazards at the client's worksite.

During the temporary worker's assignment, the client must:

- Document and maintain records of worksite-specific training and confirm with the staffing agency that such training was completed within three business days of the training;
- Provide worksite-specific training to the temporary workers and allow the staffing agency to visit the worksite to observe and confirm the client's training and information related to job tasks, safety and health practices, and hazards; and
- If requiring a temporary employee to switch roles or locations, give the employee updated safety training that addresses any specific hazards of the new role or location.

Right of Action for Any "Interested Party"

The TWFPA adds a private right of action for any "interested party." Interested party is defined as "an organization that monitors or is attentive to compliance with public or worker safety laws, wage and hour requirements, or other statutory requirements."

An interested party may initiate a civil action after exhausting remedies with the Illinois Department of Labor. An interested party must bring a claim within three years of an alleged violation.

Prevailing interested parties are entitled to 10 percent of the statutory penalties assessed and attorneys' fees and costs. The remaining 90 percent will be deposited into the Child

Labor and Day and Temporary Labor Services Enforcement Fund.

Expanded Penalties for DTLSA Violations

The TWFPA increases the potential penalties under the DTLSA. The attorney general may request that a circuit court suspend or revoke the registration of a staffing agency for violating any portion of the TWFPA or when warranted by public health concerns.

For violations found in the Department of Labor's first audit or determined by a court in a civil action brought by an interested party, the penalty is "not less than \$100 and not more than \$18,000 for violations." Following a first audit or civil action, a violator will be subject to a civil penalty of not less than \$250 and not more than \$7,500 for each repeat violation found by the Department or circuit court within three years.

Each violation of the TWFPA and each day the violation continues constitutes a separate and distinct violation.

Increased Registration Fees for Temporary Staffing Agencies

Finally, the TWFPA increases registration fees for temporary staffing agencies. The annual fee to register a labor agency with the Illinois Department of Labor will increase to \$3,000 per agency (from \$1,000) and \$750 for each branch office (from \$250).

Next Steps

The TWFPA amendments make sweeping changes to the DTLSA, including mandated equal pay and expanded protections for day and temporary workers and safety training and notice requirements for temporary staffing agencies and their clients. Illinois employers should discuss compliance with employment counsel. For more information about the TWFPA, please contact a Jackson Lewis attorney.

©2023 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.