

Temporary Labor and the Illinois Responsible Job Creation Act



by Emily J. Perkins
Heyl Royster

Staffing agencies and their third-party clients should become familiar with the new law.

Governor Bruce Rauner recently signed the "Illinois Responsible Job Creation Act" (HB0690) into law after gaining bipartisan support. The Act was enacted in an effort to provide job stability and job security to temporary laborers. The new law requires temporary staffing agencies to record and report the race and gender of all job applicants to the Illinois Department of Labor in an effort to address racial bias in hiring. The Act will also require staffing agencies to make an effort in placing temporary laborers into permanent positions as they become available. However, the Act will likely impact the costs to employers for the recruiting of temporary laborers, which may negatively impact the use of temporary labor.

The Illinois Responsible Job Creation Act contains 30 provisions relating to job insecurity for temporary laborers in an effort to strengthen industry regulations under the existing Day and Temporary Labor Services Act (820 ILCS 175/1). A brief summary of the Act, including the new requirements, is outlined below.

Key Provisions

The Act contains three key provisions: (1) notice, (2) transportation, and (3) statement of wages. The majority of these provisions were previously addressed in the Day and Temporary Labor Services Act. Under the Illinois Responsible Job Creation Act, staffing agencies are required to notify a laborer in writing of the following information:

- The name of the laborer;
- The laborer's schedule;
- The length of the assignment;
- The name and nature of the work to be performed;
- The types of equipment, protective clothing, and training that are required for the task;
- The wages offered;
- The name and address of the destination of the laborer;
- The terms of transportation; and
- The cost of the meal and equipment under certain circumstances.

In terms of transportation, the Act prohibits a staffing agency from charging a fee to transport a laborer to or from the laborer's designated work site. One of the new requirements requires a staffing agency to provide transportation for laborers from their jobsites if the staffing agency provided transportation to the jobsite at the beginning of the day, unless the laborer arranges for other return transportation.

A staffing agency is required under the Act to provide a laborer with a detailed, itemized statement of wages, which includes:

- The name, address and telephone number of each third-party client at which the laborer worked;
- The number of hours that the laborer worked and the rate of pay;
- All deductions made from the laborer's compensation either by the third-party client or by the staffing agency and the purpose for the deductions, including for the laborer's transportation, food, equipment, withheld income tax, withheld social security payments and every other deduction;
- Any other additional information required by the rules issued by the Illinois Department of Labor.

The total amount deducted for the laborer's meals, equipment, and transportation may not cause a day or temporary laborer's hourly wage to fall below the state or federal minimum wage.

Additional Information

Under the Act's new requirements, staffing agencies are prohibited from charging laborers the expense of conducting a consumer report, background check or drug test.

The Act holds a staffing agency liable for a laborer's wages if a laborer who is contracted by a staffing agency to work at a third-party client's work site is not utilized by the third-party client and does not work the shift. In that case, the agency must pay the laborer a minimum of four hours of pay at the agreed upon rate of pay. However, if the agency is able to contract the laborer to work at a different location during that same shift, the agency must pay the laborer a minimum of two hours of pay at the agreed upon rate of pay.

The Act provides two new notable requirements with the enactment of HB0690. First, staffing agencies must file an annual report to the Illinois Department of Labor to show the statistics on race and gender in the workplace. Additionally, staffing agencies are required to notify workers about the types of equipment, protective clothing, and training which is required to perform the job.

All agencies are required to register with the Illinois Department of Labor. Failure to register may result in a civil penalty of \$500 per violation. Each day that an agency operates without registering with the department will be considered a separate and distinct violation of the Act.

Third-Party Clients

The Act imposes requirements for third-party clients. A third-party client is required to provide each laborer with a work verification form at the end of each work-day, containing the date, the laborer's name, the work location, and the hours worked on that day. Failure to provide work verification may result in a civil penalty against the third-party client up to \$500 for each violation. The civil penalty may increase to \$2,500 for a second or subsequent violation.

Additionally, the Act requires the third-party clients to pay wages and related payroll taxes to a licensed staffing agency for services performed by a laborer for the third-party client according to payment terms outlined on invoices, service agreements, or stated terms provided by the agency. Failure to comply may result in civil penalty up to \$6,000 for violations found in a first audit and a penalty up to \$2,500 for subsequent violations within three years.

Conclusion

According to the American Staffing Association, there are approximately 800,000 temporary laborers in Illinois who will be affected by the Act. Therefore, it is recommended that staffing agencies become familiar with the Illinois Responsible Job Creation Act to ensure all requirements have been met prior to the effective date of June 1, 2018. If in doubt, contact your attorney for further inquiries. **iBi**

Emily Perkins is an associate at the Peoria-based law firm of Heyl Royster. She concentrates her practice in the area of employment/labor law, governmental law, Section 1983 civil rights litigation and medical malpractice defense.

[iBi - June 2018 \(/ibi/2018/jun\)](#)