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New Illinois Legislation to Make Using Temporary Labor Costlier and More Complicated

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On Friday, June 16, 2023, the Illinois House sent H.B. 2862 to Governor J. B. Pritzker for signature. Significantly, this bill (which is introduced as an amendment to the Acupuncture Practice Act) effectuates material changes (the "Amendments") to the Illinois Day and Temporary Labor Services Act (the "Act"). These Amendments could become law as early as July 1.

The number of temporary workers ('temps") in Illinois and the United States is significant and growing. In the Amendments, the Illinois Legislature noted there are approximately 650,000 temporary workers who report to staffing agencies registered under the Act, but according to the American Staffing Association ("ASA"), staffing firms employed a total of 855,100 workers in Illinois in 2021, and "U.S. staffing agencies assign millions of people to millions of jobs every business day." (*Fact Sheet: ASA Staffing Firms Employed 855,100 Workers In Illinois, AM. STAFFING ASS'N*) ASA's data also reflects that there were approximately 1.9 million temps in California, 1.35 million temps in Texas, 750,000 in Florida and 500,000 in New York and New Jersey, each in 2021. As the number of temps rises, so too may legislative initiatives seeking to protect them from inappropriate employment practices, like the Amendments.

Originally enacted in 2000, the Act provides basic protections for low-wage day or temporary workers, such as entitling them to detailed pay statements and notice of any deductions or other changes to their rates of pay. It also includes mandatory registration requirements for day and temporary labor service agencies ("staffing agencies"). The Amendments materially expand these protections.

For example, they give temps the right to refuse assignment to a client company (a "third-party client," in the language of the Amendments) experiencing a labor dispute, such as a strike, lockout or other labor strife. They also require staffing agencies to give temps written notice of an ongoing labor dispute either before or at the time of a placement and enable temps to refuse such a placement without prejudice to receiving another.

Significantly, the Amendments also require that temps assigned to a client company for more than 90 calendar days be paid at an equal rate and provided equal benefits as the lowest paid directly hired employee of the client company at the same level of seniority performing substantially similar work. In lieu of providing benefits to a temp, the temp may be paid the cash value of such benefits. If there is no directly hired comparative employee, the temp must be paid the same rate of pay and receive the same benefits as the lowest-paid employee with the closest level of seniority. In addition, upon request by a staffing agency, a client company must provide all necessary information related to job duties, pay and benefits of the temps placed by the staffing agency.

The Amendments also add significant enforcement teeth to the Act. They provide that the Attorney General may request that a circuit court suspend or revoke the registration of a staffing agency for violating any portion of the Act or when warranted by public health concerns. The Amendments grant a private, civil right of action to interested parties who bring suit for penalties against a staffing agency or client company for violating the Act. It broadly defines an "interested party" as an organization that monitors or is attentive to compliance with public or worker safety laws. Parties who prevail on such a claim are entitled to ten percent (10%) of the statutory penalties assessed (which range from $100 to $18,000 per violation) and attorneys' fees and costs.

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The Amendments impose other significant, new obligations on staffing agencies and their client companies alike. Before placing a temp, an agency must: (1) inquire about the client company's safety and health practices and disclose known job hazards to the temp; (2) provide general safety training to temps in recognized industry hazards and document that training; (3) provide a general description of their safety training to the client company at the outset of a placement; (4) provide temps with the Department of Labor's hotline to report safety concerns; and (5) tell temps who to report safety concerns to at the workplace.

The Amendments also require that before a temp starts work, client companies: (1) document and inform them of any anticipated job hazards to be encountered; (2) review the safety and health awareness training they have received from their staffing agencies to determine whether such training addresses the recognized hazards for the industry in which the client company operates; (3) provide specific training in the particular hazards of the worksite; and (4) document and maintain records of worksite-specific training and confirm to the staffing agency that such training was completed within three business days of the training. If a client company requires a temp to switch roles, updated safety training must be given to address any specific hazards of the new role. Finally, client companies must allow their staffing agencies to visit the worksite to confirm the training and information provided to temps.

It is doubtless that significant expense will accompany implementation of the Amendments, while challenges in interpreting and applying their provisions are certain. Contact **Nicholas Anaclerio** at nanaclerio@vedderprice.com or **Ellie Hemminger** at ehemminger@vedderprice.com to discuss the Amendments' impact on your business and best practices to protect your company and make it compliant.

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