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News & Types: Employment, Labor & Benefits Update

Masuda Funai Employment Newsflash: Illinois Strengthens Worker Protections By Amending the Day And Temporary Labor Services Act

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Practices: Employment, Labor & Benefits

On August 4, 2023, Governor J.B. Pritzker signed substantial amendments to the Day and Temporary Labor Services Act (DTLSA) into law, which became effective immediately. On August 7, 2023, the Illinois Department of Labor (IDOL) filed emergency rules and proposed permanent rules to implement.

The amendments to the DTLSA require that a worker assigned to a staffing agency client for more than 90 days must be compensated with at least the same pay and benefits (or an hourly cash equivalent) as the client's lowest paid, direct hire employee of the same or closest level of seniority and work experience. If there is not a directly hired comparative employee of the third-party client, the agency must pay the worker at the rate of pay and equivalent benefits of the lowest paid, directly hired employee of the third-party client with the closest level of seniority. IDOL's Emergency Rules to the amendments define "benefits" as meaning "*health care, vision, dental, life insurance, retirement, leave (paid and unpaid), other similar employee benefits, and other employee benefits as required by State and federal law*."

Notably, the rules address potential breaks in service by a temporary worker to a third-party client. The rules clarify that after August 4, 2023, if a day or temporary worker is assigned to work for a third-party client for more than 90 calendar days within any 12-month period, whether consecutively or intermittently, the temporary worker must receive equal pay and benefits. This rule also clarifies that temporary workers who had already been working at a third-party client for more than ninety days when the law became effective will not automatically receive increased pay and benefits.

The amendments further require labor service agencies to provide to a temporary worker general awareness safety training for recognized industry hazards the worker may encounter at a third-party client's worksite. The rules clarify that training must be provided on or before the temporary worker's first day working at a client company each year. The rules further clarify that the training must include all existing job hazards known to the client company or labor service agency, and such training "must include, but is not limited to, any of the following types of hazards which are present on the job site":

1. hazards which necessitate the use of personal protective equipment;

2. fall hazards;
3. electrocution hazards;
4. hazards of being struck by objects;
5. getting caught in or between hazards;
6. machinery-related hazards;
7. chemical or other substance-related hazards;
8. repetitive-motion hazards; and
9. emergency action plans.

The training shall also include "information regarding actions taken by the third-party client to eliminate, control, or otherwise mitigate or protect workers from the hazards, as well as what steps workers should take to avoid or control the hazards. This must include emergency evacuation and shelter-in-place procedures."

Furthermore, the amendments provide that a labor service agency cannot send workers to a worksite if there is a strike, lockout or "other labor trouble" without first providing the worker with a written statement (electronic statement is allowed), in a language he or she can understand, informing the worker of the labor issue and their right to refuse the assignment (which cannot then be held against the worker for future assignments).

Additionally, the amendments provide a new enforcement procedure by which any "interested party" can file a lawsuit against the labor service agency and/or the employer and then collect up to 10% of the fines and recover attorney's fees. "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." However, before an interested party can file a lawsuit, the interested party must first file a complaint with IDOL and allow IDOL an opportunity to notify the agency/employer of the alleged violations to attempt to try to resolve the issues; but if at the end of 180 days IDOL has not either worked things out or filed its own lawsuit, IDOL must issue a right to sue letter to the interested party.

It is important to note that the DTLSA *does not* apply to agencies that place workers to perform work that is strictly of a clerical or professional nature. The recent amendments to the DTLSA likewise *do not* apply to work that is professional or clerical. The DTLSA's definition of "day and temporary labor" remains unchanged and still refers to "work performed by a day or temporary laborer at a third-party client" but specifically excludes work of a "professional or clerical nature."

If you have any questions about this legal update or need any assistance complying with these new requirements, please contact Kevin S. Borozan or any other member of Masuda Funai's Employment, Labor and Benefits Group.