



Guidance for the Illinois Day and Temporary Labor Services Act

Introduction

On August 7, 2023, the Illinois Department of Labor (DOL) issued emergency rules accelerating the implementation of the Illinois Day and Temporary Labor Services Act (DTLSA) changes. These changes begin affecting employers in November 2023, so prompt attention will be required by employers who utilize temporary labor.

What are the new rules?

Earlier in 2023, Illinois Governor Pritzker signed into law House Bill 2862, which made significant amendments to the Illinois Day and Temporary Labor Services Act (DTLSA). The DTLSA governs the interaction between employers and temporary staffing agencies they may utilize to provide temporary labor services.

While most of the public attention to these changes have correctly been focused on new requirements that temporary staffing employers must comply with, employers utilizing temporary labor in Illinois are also affected and required to cooperate with and provide sufficient information to those temporary staffing agencies to allow them to comply with the law.

Equal Pay for Equal Work Amendment

Temporary staffing agencies are now required to match the hourly pay rate and benefit structure offered by you – the client company – as your “comparable” permanent employees. This requirement only applies to temporary employees that are not conducting professional or clerical roles. Currently, the law does not offer much detail on how to determine who a “comparable” employee is, however, consider permanent employees doing the same job as the temporary employees are “comparable” employees. Otherwise, the employee closest in seniority who performs similar work will likely be the “comparable” employee. Hopefully, the Illinois DOL will provide significantly more detail in future guidance.



“I’m not a temporary staffing agency – how does this affect me?”

Primarily, you will need to cooperate with the temporary staffing agency by providing them with specific data that will enable them to comply with the law. Indeed, the Illinois DOL addresses this in FAQ number 7 on the DTLA (available at <https://labor.illinois.gov/faqs/day-temp-labor-faq.html>):

Q/A 7: How can a day or temporary labor agency ensure that clients provide the necessary information to calculate wages and benefits?

Section 42 of the Act (new) says “Upon request, a third-party client to which a day or laborer has been assigned for **more than 90 calendar days shall be obligated to timely provide the day and temporary labor service agency with all necessary information related to job duties, pay, and benefits of directly hired employees** necessary for the day and temporary labor service agency to comply with this section. The failure by a third-party client to provide any of the information required under this section shall constitute a notice violation by the third-party client under Section 95.”

Section 95 of the Act contains provisions for enforcement via private right of action.

If a day and temporary labor service agency and a third-party client decide to modify their contracts to accommodate or govern this requirement, please be aware that such contractual provisions are not under the purview of IDOL.

Essentially, staffing employers will need to know the pay rate and the overall benefit package available to comparable employees in order for them to match both the rate of pay and the benefit offering to those temporary employees. While “equivalent benefits” is not clearly defined by the DTLSA currently, a definition is provided:

"Benefits" means **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.

The Illinois DOL is aware that this definition is broad and needs refinement and it is expected that they will issue additional guidance to clarify this definition soon. In the meantime, however, the staffing employer will need details on all of the above-listed benefits in order for them to provide matching benefits to their temporary employees.

“How do I calculate the cost of my benefits?”

Clients are required to provide their hourly employee benefits cost to the agency. The agency may either pay the amount as wages or provide the actual benefits using the hourly benefits calculation.

Clients should include their cost of each identified benefit. Once the cost for each employee benefit has been calculated and annualized, the total should be divided by the total number of payroll hours for the client’s employee population.

Employers should utilize 2,080 hours worked for salaried employees and actual hours worked for hourly employees. For example, if an employer’s total expense for employee benefits is \$5,000,000 and the employer pays its eligible employees for 1,000,000 hours of work, then the client’s hourly employee benefit expense would be \$5.00.



“Am I going to have to pay for this?”

The law doesn't state that you as the client employer will need to shoulder the cost of these changes, but of course each arrangement you have with temporary staffing agencies will dictate how these additional costs will be handled. However, the Affordable Care Act (ACA) rules are still going to apply as well. That means that, specifically to health insurance, you need to be careful to ensure that your risk as a potential “common law employer” of the temporary employees is covered.

The ACA has a long-standing safe harbor to handle this situation. The core rule basically states that if you pay a higher rate for temporary employees that enroll in the temporary staffing agency's plan, you can demonstrate that you contributed towards the cost of their coverage, which will satisfy your requirement under the ACA's employer mandate. If you need more information on how this works, please reach out to a member of your MMA team.

“How will the temporary staffing agency comply?”

As of November 2023, there is no definitive answer on how temporary staffing agencies will comply with the new requirements. Various strategies are being proposed by different stakeholders. Until the Illinois DOL issues additional guidance, temporary staffing agencies are simply preparing the best they can under the rules that are currently available. It is anticipated that additional guidance will be published before the end of the year that will help clarify how agencies can comply with this rule. We will update our clients as we learn more.

“What action do I need to take?”

Be prepared to share compensation rates and benefit structures for comparable employees with temporary staffing agencies. To avoid HIPAA privacy rules, do not identify any individual employees in this data. Instead, keep the information de-identified and limited to only those employees who are “comparable” to the temporary employees.

Conclusion

The DTLSA regulations are expected to be significantly amended as these new provisions take effect. It is important to monitor continuous updates from MMA as we learn of new developments, and as always, reach out to your MMA team if you have any questions.

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