

Permanent Changes for Temporary Employees: Illinois Expands Protections for Temporary Employees and Implements Stricter Compliance Requirements for Temporary Agencies and Employers

Labor & Employment Workforce Watch

WRITTEN BY

Kevin D. Kelly | Joshua A. Skundberg

[Amendments](#) to the Illinois Day and Temporary Labor Services Act (the “Act”) became effective on August 4, 2023. These amendments pose serious challenges for the way temporary labor service agencies (“Temp Agencies”) and third-party clients (“Employers”) pay, utilize, and train temporary employees.

The Illinois Department of Labor (“IDOL”) implemented [emergency rules](#) on August 7 to guide Temp Agencies, Employers, and temporary employees through the amendments. The IDOL’s [proposed permanent rules](#) are expected to be finalized in October 2023, with minimal changes being made to the emergency rules.

Below are key takeaways from the amendments and associated rules, as well as important practical implications for Temp Agencies and Employers.

Equal Pay for Equal Work (Section 42):

Temporary employees that work for an Employer for more than 90 calendar days within a 12-month period—whether consecutively or intermittently—receive increased compensation protections under the amendments. Temp Agencies must now pay a temporary employee at least the same rate of pay and equivalent benefits as the lowest paid comparable employee at the Employer. This comparable lowest-paid employee must have the same seniority, perform substantially similar work, and possess substantially similar skills and responsibilities as the temporary employee. If the Employer has no comparable employee, the temporary employee must receive at least the same rate of pay and equivalent benefits as the Employer’s lowest paid employee with the closest seniority level to the temporary employee.

The 90 days threshold can be met as early as *November 3, 2023*. But, unfortunately, the law is unclear on how Temp Agencies must count the 90-calendar-day period for determining when the pay and benefit requirements of the Act are triggered. The IDOL’s [FAQs](#) indicate that only *work* days count toward the 90-day period, which conflicts with the Act’s explicit reference to 90 *calendar* days when calculating the threshold.

Furthermore, upon request, Employers must provide Temp Agencies that have provided the Employer with a temporary employee for more than 90 days with “all necessary information” related to the comparable

employees' job duties, pay, and benefits needed to allow the Temp Agency to comply with the Act.

The Temp Agency may pay the “hourly cash equivalent” of the actual costs of the “equivalent benefits” in lieu of actually providing the benefits. “Benefits” are “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.”

Action for Civil Penalties Brought by an Interested Party (Section 67):

The amendments also expand interested parties' abilities to enforce the Act. An “interested party” is any “organization that monitors or is attentive to compliance with public or worker safety laws, wage and hour requirements, or other statutory requirements.” Interested parties alleging a violation must exhaust the IDOL administrative process before filing a lawsuit.

Right to Refuse Assignment to a Labor Dispute (Section 11):

Temporary employees may refuse an assignment to an Employer that is experiencing a labor dispute. A “labor dispute” is broad, including “any controversy concerning wages, hours, terms or conditions of employment.” Temp agencies must inquire about—and notify temporary employees of—existing labor disputes (e.g., strikes or lockouts) prior to sending the temporary employee to work.

Workplace Safety and Training Requirements (Section 85):

Prior to assigning a temporary employee to an Employer, Temp Agencies must inquire about and assess the Employers' “safety and health practices” and “hazards at the actual workplace.” This obligation may require Temp Agency representatives to visit and assess the safety of the actual worksite. If the Temp Agency becomes aware of any worksite hazards, it must urge the Employer to correct the hazard and document all such communications. The Temp Agency must remove the temporary employee from the worksite if the hazard is not corrected. The Act and its associated rules do not state how much time the Temp Agency may or should wait before removing the temporary employee from a potentially hazardous worksite.

The Temp Agency must also provide the temporary employee with safety training for “recognized industry hazards,” including a description of such training and the topics of it at the start of the assignment to the Employer. The Temp Agency must also notify the temporary employee of the IDOL's hotline phone number for reporting worksite hazards, as well as the name of the person responsible for worksite safety.

For their part, Employers must “document and inform” the temporary employee of job hazards, review the Temp Agency's training to ensure it addresses industry hazards, provide the temporary employee with specific training tailored to the particular hazards at the worksite, and document and maintain records of worksite-specific training to provide the Temp Agency within three days of providing the training.

Violations (Section 50):

The Illinois Attorney General may request a circuit court “suspend or revoke” a Temp Agency's registration if warranted by “public health” concerns or violations of the Act.

Penalties (Section 70):

Temp Agencies and Employers may receive fines ranging from \$100 to \$18,000 for initial violations of the Act, and \$250 to \$7,500 for subsequent violations. The IDOL will consider the following factors when determining fine amounts:

- The violation's seriousness, "including the nature, circumstances, extent, and gravity of the violation, including probability that death or serious physical or mental harm to a laborer will result or has resulted, the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated";
- Economic harm caused on the temporary employee;
- History of previous violations;
- Amounts necessary to deter future violations;
- Efforts by the Temp Agency or Employer to remedy the violation; and
- Any other matter that justice may require.

Practical Considerations for Temp Agencies and Employers:

These amendments will cause Temp Agencies and Employers that utilize temporary employees significant compliance issues. Temp Agencies and Employers should review the Act and its new amendments, as well as the IDOL's implementation rules, in order to avoid potentially steep fines. Five notable concerns for Temp Agencies and Employers are discussed below.

1. Temp Agencies and Employers need to be prepared for the Act's 90-day pay and benefits provision to begin applying as early as November 4, 2023, irrespective of the Act's ambiguity on how to actually calculate the 90-day threshold.
2. Temp Agencies and Employers should be prepared for increased scrutiny on safety and labor issues, as well as the potential for increased litigation concerning their use of temporary employees because an "interested party" that can pursue violations of the Act could potentially include labor unions, workers' rights organizations, government bodies, or even Employers. Because the Act does not define an "organization" for "interested party" purposes, employees could arguably use class action litigation to collectively sue Temp Agencies and Employers for alleged violations of the Act.
3. Employers undergoing labor issues—such as strikes or picketing—may have a more difficult time finding replacement employees because Employers must now notify all incoming temporary employees of such "labor disputes."
4. The IDOL has [declined](#) to advise Temp Agencies and Employers on how to calculate the hourly cash equivalent of benefits. This creates an open question on how to calculate the cash equivalent when the Employer has varying benefits (e.g., multiple health plans or varying contributions for single versus family medical coverage). Temp Agencies and Employers should review their benefits policies and determine the hourly cash equivalent of benefits for temporary employees.
5. Employers utilizing temporary employees should implement protocols for responding to Temp Agencies' requests for documentation needed to verify the minimum pay and relevant equivalent benefits amounts.

RELATED INDUSTRIES + PRACTICES

- [Employment Counseling](#)

- Labor + Employment