

# **New Jersey Significantly Expands Rights and Protections of Temporary Workers Through the Recently Enacted Temporary Workers' Bill of Rights**

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On February 6, 2023, New Jersey Governor Phil Murphy signed the [Temporary Workers' Bill of Rights](#), significantly expanding the rights and protections afforded to the 127,000 temporary workers in New Jersey. The new law, which will largely take effect on August 5, 2023, though certain provisions already took effect on May 7, 2023, sets new requirements for “temporary help service firms” that employ “temporary laborers” in a “designated classification placement.”

## **Key Definitions**

Under the Temporary Workers' Bill of Rights, a “temporary help service firm” is defined as “any person or entity who operates a business which consists of employing individuals directly or indirectly for the purpose of assigning the employed individuals to assist the firm’s customers in the handling of the customers’ temporary, excess or special workloads, and who, in addition to the payment of wages or salaries to the employed individuals, pays federal social security taxes and State and federal unemployment insurance; carries workers’ compensation insurance as required by State law; and sustains responsibility for the actions of the employed individuals while they render services to the firm’s customers.”

A “temporary laborer” means “a person who contracts for employment in a designated classification placement with a temporary help service firm.”

However, “designated classification placement” means an assignment of a temporary laborer to perform work in certain occupational categories as designated by the Bureau of Statistics of the U.S. Department of Labor. Therefore, the new law only provides protections to temporary workers who are assigned by a temporary help service firm to perform work in any of the following occupational categories:

- Other Protective Service Workers (33-9000);
- Food Preparation and Serving Related Occupations (35-0000);

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- Building and Grounds Cleaning and Maintenance Occupations (37-0000);
  - Personal Care and Service Occupations (39-0000);
  - Construction Laborers (47-2060);
  - Helpers, Construction Trades (47-30000);
  - Installation, Maintenance, and Repair Occupations (49-0000);
  - Production Occupations (51-0000);
  - Transportation and Material Moving Occupations (53-0000); or
  - Any successor categories as the Bureau of Labor Statistics may designate.

A “third-party client” is defined as “any person who contracts with a temporary help service firm for obtaining temporary laborers in a designated classification placement.”

## **Provisions That Went Into Effect on May 7, 2023**

As noted above, certain provisions of the Temporary Workers’ Bill of Rights went into effect on May 7, 2023, including (i) those mandating notice requirements at the time of dispatch to a third-party client, and (ii) the anti-retaliation provisions. The rest of the law will go into effect on August 5, 2023.

### ***Notice Requirements at the Time of Dispatch***

Effective May 7, 2023, temporary help service firms must provide detailed wage notices to temporary workers at the time of dispatch. The notices must be in English and in the language identified by the temporary worker as their primary language. The notice must include the following items:

1. the name of the temporary laborer;
2. the name, address, and telephone number of:
  - the temporary help service firm, or the contact information of the firm’s agent facilitating the placement;
  - its workers’ compensation carrier;
  - the worksite employer or third party client; and
  - the Department of Labor and Workforce Development;
3. the name and nature of the work to be performed;
4. the wages offered;
5. the name and address of the assigned worksite of each temporary laborer;
6. the terms of transportation offered to the temporary laborer, if applicable;
7. a description of the position and whether it shall require any special clothing, protective equipment, and training, and what training and clothing will be provided by the temporary help service firm or the third party client; and any licenses and any costs charged to the employee for supplies or training;
8. whether a meal or equipment, or both, are provided, either by the temporary help service firm or the third party client, and the cost of the meal and equipment, if any;
9. for multi-day assignments, the schedule;
10. the length of the assignment, if known; and
11. the amount of sick leave to which temporary workers are entitled.

On April 24, 2023, the New Jersey Department of Labor and Workforce Development issued a [Notice Form](#) that temporary help service firms must complete and provide to workers at the time of dispatch.

### ***Retaliation Prohibition, Rebuttable Presumption, and Relief***

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The Temporary Workers' Bill of Rights also prohibits temporary help service firms, their third-party clients, and their agents from retaliating against temporary laborers for exercising their rights under the law. A termination or disciplinary action against temporary workers within 90 days of the person's exercise of rights under the new law raises a rebuttable presumption of such action having been done in retaliation for the exercise of those rights. If a temporary worker successfully alleges unlawful retaliation, they could be entitled to the greater of all legal or equitable relief as may be appropriate or liquidated damages equal to \$20,000 per incident of retaliation, reinstatement, if appropriate, and attorney's fees and costs.

## **Provisions Going Into Effect On August 5, 2023**

### ***State Certification***

Temporary help service firms are prohibited from making any designated classification placements unless they receive certification to do so from the Director of the Division of Consumer Affairs in the Department of Law and Public Safety. A temporary help service firm seeking certification must file a form along with proof of Workers' Compensation insurance coverage, an employer account number for the payment of unemployment insurance contributions and a fee assessed by the director. Temporary help service firms that make designated classification placements without first obtaining a certification from the director are subject to a \$5,000 penalty for each violation, and each day of operation without the certification is a separate and distinct violation. The Division of Consumer Affairs in the Department of Law and Public Safety will also create and maintain on its website publicly accessible lists of certified temporary help service firms, as well as those firms whose certification has been suspended or revoked.

Third-party clients must also verify a temporary help service firm's status with the director before entering into a contract, and again on March 1 and September 1 of each year. Third-party clients who fail to comply with this requirement are subject to civil penalties up to \$500 per offense. Each day during which a third party client contracts with a person operating as a temporary help service firm but not certified as a temporary help service firm constitutes a separate and distinct offense.

### ***Wage Requirements***

Under the new law, temporary laborers must be paid at least the same average rate of pay and average cost of benefits, or the equivalent thereof, as the permanent employees performing the same or similar work for the third-party client. Additionally, if a temporary laborer is contracted to work at a third-party client's worksite in a designated classification placement, but is not being utilized by the third-party client, then the temporary help service firm must pay the temporary worker a minimum of four hours of pay at the agreed upon rate. If the temporary help service firm contracts the temporary laborer to work at another location during the same shift, the firm must pay the temporary worker a minimum of two hours of pay at the agreed upon rate of pay.

In addition to the wage notice requirements that must be provided at the time of dispatch, temporary help service firms must also provide temporary laborers with a detailed itemized statement on their paycheck stub or on a form approved by the Commissioner of Labor and Workforce Development at the time of payment of wages. The statement must list:

1. the name, address, and telephone number of each third-party client at which the temporary laborer worked;
2. the number of hours worked by the temporary laborer at each third-party client each day

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- during the pay period;
  3. the rate of payment for each hour worked, including any premium rate or bonus;
  4. the total pay period earnings;
  5. the amount of each deduction made from the temporary laborer's compensation made by the temporary help service firm, and the purpose for which each deduction was made;
  6. the current maximum amount of a placement fee which the temporary help service firm may charge to a third-party client to directly hire the temporary laborer; and
  7. any additional information required by the Commissioner of Labor and Workforce Development.

Moreover, the new law prohibits certain wage deductions, including for transportation, background checks, and for cashing paychecks. While the costs of meals and equipment may be deducted, the deductions cannot reduce a temporary laborer's pay below minimum wage.

### ***Recordkeeping Requirements***

Temporary help service firms will be required to keep records related to each time they send a person to work as a temporary laborer in a designated classification placement. The records must be maintained for six years, and records described in paragraphs (1), (2), (3), (6), (7), and (8) must be made available for the temporary worker's review and copying. The records that must be kept include:

1. the contact information for the third-party client;
2. the contact information for each temporary laborer and the type of work they performed, the number of hours worked, the hourly rate of pay, and the date they were sent;
3. the name and title of the individual(s) at the third-party client who are responsible for the transaction;
4. specific qualifications or attributes of each temporary laborer;
5. copies of all contracts with and invoices for the third-party client;
6. copies of all employment notices provided to temporary laborers pursuant to the law;
7. the amounts of any deductions to be made from each temporary laborer's compensation by the third-party client or the temporary help service firm;
8. verification of the actual cost of equipment or meals charged to the temporary laborer; and
9. any additional information required by the Commissioner of Labor and Workforce Development.

### ***Placement Fee and Prohibition on Permanent Position Acceptance Restrictions***

Temporary help service firms will be prohibited from: (i) restricting the right of a temporary laborer to accept a permanent position with a third-party client; (ii) restricting the right of a third-party client to offer employment to a temporary laborer; or (iii) restricting the right of a temporary laborer to accept a permanent position for any other employment. However, a temporary help service firm may charge a placement fee to a third-party client for employing a temporary laborer within the limits prescribed by the new law.

### ***Private Right of Action***

The Temporary Workers' Bill of Rights provides a private right of action to aggrieved temporary laborers against the temporary help service firm and third-party client. Temporary laborers who have been subjected to a violation of the new law may bring a claim in the New Jersey Superior Court

within six years from the final date of employment by the temporary help service firm or the third party client or from the date of termination of the contract between the temporary help service firm and the third-party client. Such an action may be brought individually or in a class setting, and the temporary help service firm and third-party client could be held jointly and severally liable for violations.

## Next Steps

Many open questions remain as regulations have not been issued at this time. However, the New Jersey Department of Labor and Workforce Development has created a [website](#) to provide additional guidance into this law. In the meantime, temporary help service firms and companies that use such firms should begin implementing these new requirements and review their related contracts to ensure compliance with the Temporary Workers' Bill of Rights. We will continue to monitor any new developments, including any regulations and guidance from the New Jersey Commissioner of Labor and Workforce Development.

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