

# Two New Laws Change Landscape for New Jersey Employers

An Overview Of The Amendments To New Jersey's Unemployment Compensation Law And The Recently Enacted "Temporary Worker's Bill Of Rights"

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Two new laws impacting New Jersey employers are highlighted for review in this August Employment Law Monthly article. The first deals with amendments to New Jersey's unemployment compensation law, which modified existing law to impose strict reporting requirements on employers and harsh penalties for those who fail to comply. The second is a new law, titled the "Temporary Worker's Bill of Rights," that is aimed at protecting the rights of New Jersey's 130,000 temporary workers. The law broadly covers all "temporary help service firms" that are located, operate or transact business in New Jersey and applies to temporary workers employed in a broad array of occupations.

## Unemployment Compensation Law

The first of the important legal changes involves New Jersey's Unemployment Compensation Law. The changes created two new reporting requirements, modified timelines related to the unemployment process, and provided increased penalties for non-compliance.

### *New Reporting Requirements*

The first of the two new reporting requirements mandates employers submit post-termination notification. Employers meet this requirement by completing the New Jersey Department of Labor & Workforce Development's (the "Department") form titled "Instructions for Claiming Unemployment Benefits" (Form BC-10) and submitting it to the employee and the Department. The law requires employers submit this form "immediately and simultaneously" by electronic means.

The second requirement mandates employers submit information to the Department regarding the separated employee to assist with the unemployment insurance eligibility determination. The Department has not yet published a corresponding form for this requirement, but the form will require employers to submit sufficient information for the Department to make a benefit determination. This form will be required to be submitted regardless of whether the employee applies for unemployment compensation.

### *Modifications to Unemployment Timelines*

The amendments further modified the timelines in the unemployment process. These include:

1. Employers will be notified by the Department of missing information within seven days of an employee's unemployment insurance claim or the employer's submission of the required information.

2. Electronic notifications will be sent by the Department to the employer at the time of filing of an unemployment insurance claim.
3. The Department will make an initial benefits determination within three weeks of receiving a claim.
4. Employees seeking benefits will have 21 days to appeal the Department's determinations, and seven days to appeal a subsequent determination.
5. Employers will have seven days to appeal subsequent benefit determinations after receiving a written explanation from the Department.

#### *Increased Penalties*

The amended law also established increased penalties for non-compliant employers. While previously, employers only were subjected to a \$25 fine for every 10 days the employer failed to provide information to the Department, the amendments now provide that an employer who “willfully fails or refuses to furnish any reports or information” is subject to a fine of \$500 or 25% of any amount “fraudulently withheld.” The amendments further provide that employers who fail to provide timely information may lose the ability to challenge the Department's determination.

#### *Recommendations*

The above changes to the law are now in effect. Employers should immediately update their policies and procedures to ensure they are providing the appropriate notices and meeting the timing requirements as outlined above. Furthermore, human resource personnel and staff should receive training on these new requirements to ensure compliance.

#### **Temporary Workers' Bill of Rights**

New Jersey has approximately 130,000 temporary workers, who before August 5, 2023, had no specific laws that governed their employment. This recently changed as Governor Murphy signed into law the “Temporary Worker's Bill of Rights.” The new law is said to be one of the farthest reaching laws of its kind in the country. It is aimed at protecting the rights of New Jersey's temporary workers by broadly applying to all “temporary help service firms” that are located, operate or transact business in the State, and applying to all temporary workers in the following occupations:

6. Protective services, such as animal control, private investigation, and security.
7. Food preparation, such as cooking, bartending, dishwashing, and serving.
8. Building and grounds cleaning and maintenance, including pest control and landscaping.
9. Personal care and services, such as hairdressers, attendants, bellhops, and childcare.
10. Construction and related fields, such as carpentry, painting, electrical, and roofing.
11. Installation, maintenance, and repair.
12. Production, including manufacturing, fabricating, food processing, chemical processing, and plant operation.
13. Transportation and logistics.

The law defines “temporary help service firm” as “any person or entity who operates a business that 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 and 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.”

The Temporary Workers' Bill of Rights requires that any temporary laborer covered under the law must be paid an hourly wage rate equal to what is provided to the third-party client's employees (including an hourly cost of benefits in this calculation) performing substantially similar work on jobs that require similar effort, skill and responsibility.

The law is enforced by both the New Jersey Division of Consumer Affairs and the New Jersey Department of Labor & Workforce Development. As of the publication of this article, the Department has issued proposed rules, which clarify implementation of the law, that will remain open for public comment until October 20, 2023. The proposed rules clarify that temporary service firms in New Jersey must comply with the requirements of the new Temporary Workers' Bill of Rights law even when assigning temporary workers to a third-party client outside of New Jersey.

To implement provisions of the law, the Department issued the “Temporary Laborer Assignment Notification” form that all temporary help service firms must now complete and provide to each covered temporary laborer upon assignment to a temporary position. The notice requirement provides each temporary worker with specific information about their assignment, including the name, address and contact information of the temporary staffing agency and the third-party employer; the applicable workers' compensation carrier; information regarding paid sick leave; the worker's assigned worksite; the nature of the work and description of the position assigned; schedule; wages; and length of the assignment. The form further advises whether meals will be provided, whether licenses, equipment or special clothing will be needed, and whether training will be required or provided.

The law also provides that no temporary workers may be sent to fill in for employees on strike, lockout, or other labor dispute without first providing them a written statement informing them of the dispute and their right to refuse the assignment without fear of retaliation. For any change in scheduling or job location for a multi-day assignment, the “temporary help service firm” must provide notice to the worker at least 48 hours in advance of the change where feasible.

Finally, a temporary help service firm will be required to provide notice to temporary workers of their right to request the firm withhold their daily wages and be paid on a bi-weekly basis by paper check, direct deposit, or in cash. The temporary workers also must be provided an itemized pay statement which details the following:

14. The name, address and telephone number of each third-party client at which the temporary worker worked.
15. The number of hours worked by the temporary worker at each third-party client each day during the pay period.
16. The rate of pay for each hour worked, including any premium rate or bonus.
17. The total pay period earnings.
18. The amount of each deduction from the temporary worker's compensation by the temporary help service firm, and the reason for each deduction.

The law prohibits a covered temporary help service firm from deducting from a worker's pay for supplies and food if that would result in the worker receiving less than minimum wage, and prohibits any deduction from the worker's pay for transportation to and from the worksite, or for any background or drug testing.

Failure to provide the requisite notices may result in a civil penalty for the temporary help service firm of between \$500 and \$1,000 for each violation. In addition, the law provides a private right of action. This means that the temporary worker may file a civil lawsuit in the New Jersey Superior Court against both the temporary help service firm and the company utilizing the temporary worker's services. Companies using temporary workers, as well as the staffing agencies, are jointly and

severally liable for any violations of the law – meaning that either company could be responsible for paying the full damage amount awarded in the lawsuit.

#### *Recommendations*

Temporary service agencies doing business in New Jersey, as well as the companies that use their services, should review their policies and procedures to ensure they are complying with the law's requirements. Companies that utilize temporary workers should further ensure their contractual agreements with the temporary service agencies are updated to mandate that these companies are complying with the law. In addition, relevant personnel should be trained accordingly to avoid non-compliance.

The Porzio [Employment](#) Team is available to assist in all aspects of the implementation of these new requirements, including policy development, training, and guidance.

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