

Management Alert



Staffing Agencies And Worksite Employers To Face Significant Regulations in Massachusetts Beginning In 2013

Governor Deval Patrick recently signed into law a bill entitled “An Act Establishing a Temporary Workers Right to Know.” The Act, which takes effect on January 31, 2013, requires staffing agencies to provide temporary employees with comprehensive, individualized, pre-employment information regarding each new work assignment, limits the fees for which agencies and worksite employers may charge temporary employees, requires staffing agencies to reimburse travel expenses of temporary employees sent to work sites where no work is available, and subjects staffing agencies and worksite employers to additional regulations and civil and criminal penalties.

Notice Requirements

The focus of the Act is the new notice requirements, which require staffing agencies to provide temporary employees written notices concerning the following:

- the name, address, and telephone number of: (i) the staffing agency or the agent “facilitating” the work placement; (ii) the staffing agency’s workers’ compensation carrier; (iii) the worksite employer; and (iv) the Massachusetts Department of Labor Standards (“DLS”);
- a description of the position and whether it requires special clothing, equipment, training, or licenses, and any costs charged to the employee for supplies or training;
- the designated pay day, hourly rate of pay, starting time, anticipated end time, whether “overtime pay may occur”, and, when known, the expected duration of employment;
- whether any meals will be provided by the agency or worksite employer and the charge, if any, to the employee; and
- details concerning the means of transportation to the worksite and any transportation fees charged by the staffing agency or worksite employer for transportation services.

If a staffing agency conveys this information to the employee by telephone initially, it must confirm the terms in writing in a form designated by the employee before the end of the first pay period. Any changes to these initial terms must be immediately provided to, and acknowledged by, the employee. Staffing agencies will be required to display a poster listing these requirements, and the telephone number of the DLS, in their places of business. The Act directs DLS to create a sample poster.

The new notice requirements do not apply to two categories of employees: (1) “professional employees,” as defined in the federal Fair Labor Standards Act, 29 U.S.C. § 152; and (2) secretaries or administrative assistants with certain enumerated duties.

Limitations on Fees Charged to Temporary Workers

Staffing agencies and worksite employers will be prohibited from charging fees for the following:

- the cost of registration of the staffing agency or the cost of procuring employment;
- any good or service, unless there is a written contract stating that the employee understands that the purchase is voluntary, and providing that the agency does not profit from the fee;
- a criminal record offender information request;
- the provision of a bank card, debit card, payroll card, voucher, draft, money order, or similar form of payment of wages that exceeds the actual cost per applicant or employee;
- the provision of a drug screen that exceeds the actual cost per applicant or employee;
- any good or service that would cause the applicant or employee to earn less than the minimum wage; or
- transportation costs, except as provided below.

Staffing agencies or worksite employers who provide transportation to a worksite may not charge an employee more than the cost of furnishing such services, and in no event can the fee exceed 3% of the employee's total daily wages or reduce the employee's daily wages below the minimum wage. No fee can be charged for a transportation service that a temporary employee is *required* to use. Finally, a staffing agency must reimburse a temporary employee's travel expenses if it sends the employee to a work site but no job is available that day.

The Act also prohibits a staffing agency or worksite employer from making deductions from the wages of an employee without the express written authorization of that employee. A staffing agency or worksite employer must furnish the employee with a copy of the signed authorization in a language that the employee can understand.

Additional Restrictions

The Act places some additional restrictions on staffing agencies. Staffing agencies may not:

- "knowingly issue, distribute, circulate or provide any false, fraudulent, or misleading information, representation, promise, notice or advertisement to any applicant or employee";
- use any name that they have not registered with DLS;
- assign or place an employee by force, fraud, or for illegal purposes;
- assign or place an employee "where the employment is in violation of state or federal laws governing minimum wage, child labor, compulsory school attendance, required licensure or certification, or at any location that is on strike or lockout without notifying the employee of this fact"; or
- refuse to return personal belongings or excessive fees or charges to an employee.

Enforcement and Penalties

DLS will administer and interpret the new law, and the Office of the Attorney General will be responsible for enforcing it. DLS has stated that it will promulgate regulations necessary to carry out the provisions of this law after a public hearing. However, proposed regulations are not yet available, and there is no guarantee that regulations will be in place before the Act goes into effect on January 31, 2013.

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Violations of the law are subject to harsh potential criminal and civil sanctions, including criminal penalties of up to two years in jail and fines of up to \$50,000, and civil penalties of up to \$25,000 per violation.

Implications for Staffing Agencies And Worksite Employers

Staffing agencies and worksite employers should take proactive steps to comply with the new law prior to January 31, 2013. Staffing agencies should consider immediately notifying their clients in the Commonwealth regarding the new law, as staffing agencies will be required to obtain additional information from their clients prior to contacting temporary employees regarding assignments. Because many temporary workers work at different worksites, or have new assignments on a weekly or even daily basis, staffing agencies will need to provide such workers with multiple new notifications per pay period. Staffing agencies also should take steps to determine whether any of their temporary employees are exempt from the notice requirements. Worksite employers should review any fees they currently charge to temporary employees to ensure compliance with the new law.

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