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INFORMATION SHEET ON A-1474's IMPACT ON NEW JERSEY'S TEMPORARY STAFFING INDUSTRY

Many NJ's staffing sectors – not just light industrial staffing – are impacted by this new law

A-1474, a bill that provides certain protections and rights for temporary workers, was signed by Governor Murphy on February 6, 2023. A copy of new law is available by clicking the URL in the footnote below¹. Several provisions of the law will take effect in three months, on May 7, 2023², while the rest of the bill will take effect after six months in August 2023. The final effective dates, however, may be postponed by the Department of Labor and Workforce Development (NJLWD) and Division of Consumer Affairs (NJCA) if they need additional time to create, review, and ultimately approve forms, notices, posters, rules, and regulations.

In the meantime, NJ temporary staffing firms are encouraged to meet with vendors, professional advisors, and other internal and external resources to begin development of new system capabilities, corporate policies, operational practices, and training in order to be prepared for this law's effective date.

Client relationships will also be significantly affected by the economic impacts of this law.

This Information Sheet has been prepared to provide a summary of the most important provisions in the bill for NJ's temporary staffing firms. Failure to comply with these new provisions could create legal liability and exposure for both staffing firms and clients.

Staffing firms are also encouraged to seek the advice of their legal advisors regarding the new law.³

This document is not an exhaustive analysis of the new law. The final rules and regulations will provide the missing critical details and requirements for temporary staffing firms.

Which Staffing Sectors Does This New Law Apply to?

While earlier conversations regarding this law focused on light industrial, the new law's scope of job titles and occupations is actually much broader. Any temporary staffing firm providing NJ clients (other than public sector entities which are excluded from the law⁴) with temporary staff who fall within the

¹ [1474 R2.PDF \(state.nj.us\)](#). Section numbers in this document refer to sections in the bill.

² Sections 3 and 10 of the law

³ ***This Information Sheet is not intended to provide legal advice to the staffing firm. Staffing firms are encouraged to get the advice of their own professional and legal advisors.***

⁴ Last paragraph of Section 2

occupational categories covered under the law's definition of a "Designated Classification Placement," are subject to the provisions of this new law.

As defined⁵, Designated Classification Placements are any temporary assignments performing duties covered under any of the following occupational categories as defined by the Bureau of Labor Statistics:

- **Protective Service Workers (33-9000)** such as security guards, crossing guards and flaggers, lifeguards, etc.
- **Food Preparation and Serving related occupations (35-0000)** such as cooks, servers, bartenders, waiters, food servers, dishwashers, etc. (i.e., the hospitality staffing sector)
- **Building and Grounds Cleaning and Maintenance occupations (37-0000)** such as first-level supervisors, janitors, housekeeping staff, groundskeeping and landscaping, etc. (i.e., landscaping and housekeeping sectors)
- **Personal Care and Service occupations (39-0000)** such as gambling service operators, ushers, attendants, barbers, baggage porters, childcare workers, etc.
- **Construction Laborers (47-2060) and Helpers, Construction Trades (47-3000)** such as construction helpers and laborers (i.e., any lower skilled temporary staffing positions on the construction site other than administrative, professional, and managerial) (i.e., construction staffing sector)
- **Installation, Maintenance, and Repair occupations (49-0000)** such as machine repair, equipment installers, technicians, repair mechanics, aircraft mechanics and service technicians, vehicle technician and repairers, industrial machinery mechanics, machinery maintenance workers, line installers, etc. (i.e., heavy industrial sector - positions associated with machinery installation, repair, and maintenance)
- **Production occupations (51-0000)** such as assemblers and fabricators, food process workers (bakers, butchers, etc.), metal and plastic workers, machine operators, plant and system operators (stationary engineers and boiler operators, etc.), quality inspectors, CNC tool operators, helpers, etc. ((i.e., industrial staffing)
- **Transportation and Material Moving occupations (53-0000)** such as first line supervisors, truck drivers, bus and van vehicle drivers, transportation inspectors, material moving workers (conveyor operators, forklift operators, packers and packagers, stackers and order fillers, etc. (i.e., transportation and warehouse sector).

A full, detailed list of job categories and job titles can be found under the numbered categories noted above at https://www.bls.gov/soc/2018/major_groups.htm.

All references to "employee" in this Information Sheet refer to a temporary employee filling a "designated classification placement."

The Law's Operational Requirements Regarding New Assignments

The following is a list of the major operational requirements that will need to be implemented by staffing firms if they supply designated classification placements and only apply to candidates and employees associated with these placements⁶:

- The staffing firm will provide the employee with a written employment notice at the time of dispatch in English **and** the employee's **primary** language regarding numerous specific details of the

⁵ Section 2

⁶ The law's requirements as they apply to designated classification placements do NOT apply to other assignments and employees that would not be deemed to be a designated classification placement (such as clerical, finance, engineering, etc.).

assignment as specified in the new law in the same manner the assignment was accepted (i.e., in writing if in person or electronically if remote). (Section 3. a.)

- In the event of a change in schedule, shift, or assignment location, the staffing firm shall provide notice not less than 48 hours in advance to the employee, if possible, in the same manner the assignment was accepted by the employee. (Section 3.a.)
- If a candidate for a designated classification placement is not placed on assignment, the staffing firm must upon the candidate's request provide to the candidate a confirmation dated (with date and time) and signed by a staffing firm staff member stating that the candidate sought work. (Section 3.a.)
- Employees cannot be sent on assignment to a client where there is a lockout, strike or other labor dispute without providing at time of dispatch a written statement informing the candidate of their right to refuse the assignment. (Section 3.b.)
- Staffing firms must have internal staff (or use the services of a vendor) who can effectively communicate with the candidate/employee in Spanish or in the language that is generally understood in the locale of the staffing firm. (Section 3.c.)
- NOTE: Section 4 a.(6) requires that the staffing firm retain copies of all of the above notices issued to the candidate/employee under Section 3 for a period of six years.

THE FIRST FIVE OF THESE OPERATIONAL REQUIREMENTS GO INTO EFFECT ON MAY 7, 2023.

The Law's Impact on Transportation

Regarding the transportation of designated classification placement employees to the assignment, the new law includes the following:

- Staffing firms are jointly and severally liable for the conduct and performance of the person/firm transporting employees between the firm and the client site unless the transportation service is a public mass transportation system, a common carrier, the employee's providing their own transportation, or a service freely selected by the employee. (Section 5.b.)
- If a staffing firm provides transportation or refers an employee to any transportation service, the employee will not pay a fee for the transportation service. Therefore, the staffing firm may not charge the temporary laborer for transportation. (Section 5.d.)
- The staffing firm cannot require an employee use transportation provided by the firm or by another provider of transportation services. (Section 5.c.)
- Regarding car pools, a staffing firm's direction to use a specific car pool or any mention of a cost of a car pool is considered a referral by the staffing firm. (Section 5.d.)
- Staffing firms are required to keep information on file on any provider of transportation to which the staffing firm makes referrals regarding the provider's compliance with the law's requirements regarding minimum insurance as set by the state, license requirements, as well as seat and safety belt requirements. (Section 5.e. and f.)
- Employees who are transported to the work site by the staffing firm or a referred transportation service shall be provided transportation back to the point of hire each work day, unless the employee requests otherwise. (Section 5.g.)

The Law's Impact on Wage Payments to Employees

A new detailed itemized "Wage Payment and Notice Form" must be provided to the employee at the time of payment of wages, listing the following information:

- Name, address, and telephone number of each client where the employee worked during the work period
- Number of hours worked at each client by each day during the work period (if multi-days during the work week, a summary of hours worked at the one client's work site with start dates and end dates of the work),
- The pay rate for each hour worked, including overtime rates of pay,
- Total pay period earnings,
- The amount of each deduction along with information regarding deductions,
- Detailed breakdown of taxes, contributions to state unemployment and disability trust funds, and every other deduction,
- The current maximum placement fee as of the end of the work period which the staffing firm may charge a client for the placement of the employee, (all of the above per Section 6.a. and the placement fee requirement is also in Section 7.a.(2)),
- The total amount of actual charges to each client for each pay period compared to the employee's total compensation cost (hourly pay plus costs of benefits provided by the staffing firm) (Section 7.a.(2)), and
- The employee shall be informed on the Wage Payment and Notice Form that an annual earnings summary will be provided to the employee (or alternatively the staffing firm can post a notice regarding the availability of an annual earnings summary). (Section 6.b.)

Additional new wage-related elements in the law:

- For every one-day assignment, the client is required to provide to the employee a "work verification form" which notes the date, the employee's name, work location, and hours worked that day. The client is subject to a civil penalty for failure to provide this form. (Section 6.a.)
- An annual earnings summary shall be provided by the staffing firm to each employee regarding the preceding calendar year no later than February 1. (Section 6.b.)
- Staffing firms who pay their employees daily must post a notice that employees have the right upon their request to have the staffing firm pay their wages on a bi-weekly basis. (Section 6.c.)
- Staffing firms cannot charge employees for check cashing fees, consumer reports, background checks, or drug tests. (Section 6.d.)
- Permitted deductions for meals and/or equipment (which shall not be greater than their cost) shall not cause the hourly pay rate to fall below the state minimum wage. (Section 6.f.)
- If an employee does not have work at the client's worksite, the employee shall be paid by the staffing firm a minimum of four hours of pay unless the employee is reassigned to work at another location by the staffing firm during the same shift. In this case the employee is paid two hours rather than four, in addition to the hours worked at the other location. (Section 6.g.)

The Law's Impact on Permanent Placement Fees

The law prohibits a staffing firm from restricting the right of an employee to accept a permanent position with a client to which the staffing firm referred the employee. The law also mandates the amount of the placement fee that the staffing firm can charge the client. The placement rate calculation is not specified adequately in the new law and will require waiting for regulations to be issued. The law's placement fee's period of employment, however, will use the hours of work of the employee with the staffing firm over the previous 12 months rather than the hours of work at the client. (Section 7.a.(1))

The Law's Impact on Employee's Pay Rates

The new law requires the staffing firm to pay the employee working at a client at least the equivalent of the average pay rate plus a cash equivalent equal to the average cost of benefits currently being paid to the client's own employees performing the same or substantially similar work. Obviously, the staffing firm must obtain in a timely manner this information from the client for each category/job title being serviced by the staffing firm that would also be a designated classification placement. Both the staffing firm and client are jointly and severally responsible for any violations of this provision. (Sections 6.b-d.)

Numerous client contracts will have to be renegotiated as a result of this law.

The Law's Requirement for Certification with NJ Division of Consumer Affairs (NJDCA)

A staffing firm that "is located, operates, or transacts business within this State [NJ] shall not make any designated classification placements unless it [the staffing firm] is certified by the director [of NJDCA]." (Section 8.a.) Not only staffing firms located in NJ but also out-of-state staffing firms without NJ branch locations transacting business within NJ are subject to this requirement. This certification requirement is in addition to the current registration requirement administered by NJDCA.

The certification process shall include registration fees not to exceed \$2,000 per year for the firm and \$750 per year for each branch. (Section 8.a.) The staffing firm is also required to obtain and maintain a \$200,000 surety bond in favor and payable to the people of the State of New Jersey and file a copy with the NJDCA. (Section 8.c.)

NJDCA's public website shall maintain:

- A list of all staffing firms making designated classification placements whose certification is in good standing and
- A second list of staffing firms who have had their certifications suspended or revoked plus reasons for both. (Section 8.b.)

None of a staffing firm's officers, directors, partners, managers, or owners of 25% or more beneficial interest must have been involved in in a similar role in a staffing firm which had its registration or certification revoked or suspended within the past five years or be under the age of 18 years. (Section 8.d.)

A client would be violating this law if a client enters into, or continues in, a contract to provide employees in a designated classification placement with a staffing firm not certified (or no longer certified) in accordance with Section 8 of this law. Clients must also verify the staffing firm's status with the NJDCA prior to entering into a contract, and revalidate certification statuses on March 1 and

December 1 of each year. Additionally staffing firms shall provide clients proof of certification at the time of entering the contract. (Section 9.)

The Law Institutes Anti-Retaliation Rights

It is unlawful for either a staffing firm or a client to retaliate against an employee covered by this law for exercising their rights. In fact, the termination or discipline of an employee within 90 days of exercising their rights would raise a rebuttal presumption of retaliation, thus eliminating an initial burden of proof by the employee. The staffing firm and/or client would be subject to administrative penalties. (Section 10)

SECTION 10'S ANTI-RETALIATION RIGHTS AND ADMINISTRATIVE PENALTIES GO INTO EFFECT ON MAY 7, 2023.

The Law Creates Private Right of Action Against BOTH Staffing Firms and Clients

Employees, including class actions, can institute civil actions in Superior Court against both staffing firms and clients. A successful employee claim would 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 as selected by the employee, and reinstatement plus attorneys' fees and costs. (Section 11)

SUMMARY

NJSA is providing this Information Sheet to NJ's temporary staffing firms so that they can begin the process of understanding and preparing for this law's requirements. Staffing firms will need to identify internal and external resources to guide and create the new systems, policies, procedures, contracts, client advisories, etc. as soon as possible.

Please understand that NJ's staffing firms may not have all the details and definitions necessary to develop the firms' implementation plans until after final regulations and rules have been released. NJSA will provide new information and updated effective dates to members as soon as available.

Staffing firms are encouraged to immediately review and become familiar with this law since this Information Sheet only addresses the highlights. This law contains additional requirements not mentioned in this document.

For additional information, contact the NJSA headquarters at P.O. Box 518, Mount Laurel, NJ 08054; Tel: 973-283-0072; email office@njsa.com; website www.njsa.com.