

## Temporary Workers' Bill of Rights Provides Rights That Are Not Temporary

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Employers should be aware of the terms of the [New Jersey Temporary Workers' Bill of Rights](#), which recently went into effect. It does not apply to all temporary worker positions, but only to those temporary workers who are assigned by a temporary service firm to perform work in certain occupational jobs.

### **The following occupational categories are affected:**

- Other Protective Service Workers (33-9000)<sup>[1]</sup>
- Food Preparation and Serving Related Occupations (35-0000)
- 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

### **Equal Compensation of Pay and Average Cost of Benefits, or the Cash Equivalent Thereof, of Third-Party Client Employees**

The Temporary Workers' Bill of Rights requires temporary workers, as designated above, to be paid the same average rate of pay as a permanent employee of the third-party client who performs the same or substantially similar work for the employer at the same time the temporary worker is assigned to the position. It also goes one step further to require that temporary workers also receive the "average cost of benefits or the cash equivalent thereof."

### **Compensation Required Even If There Is No Work Available at the Worksite**

Even if there is no work available at the third-party client's worksite where the temporary worker was assigned to work that day, the temporary worker must be paid by the temporary help service firm for a minimum of four hours of pay at the agreed-upon rate. If the temporary laborer is able to work at another location during the same shift, the temporary laborer must still be paid for a minimum of two hours of pay at the agreed-upon rate of pay for the location change as well as the hours worked at the new location.

# New Record-Keeping Requirements

Under the Temporary Workers' Bill of Rights, a temporary help service firm will be required to keep certain records for a period of 6 years.

Third-party clients must remit the following information to the temporary help service firm no later than seven days following the last day of the work week worked by the temporary laborer:

- the name and address of the temporary laborer
- the specific location sent to work
- the type of work performed
- the number of hours worked
- the hourly rate of pay
- the date sent

Failure of the third-party client to do so could result in civil penalties for each violation.

## Anti-Retaliation Rights

The Temporary Workers' Bill of Rights also makes clear that it is unlawful for either a temporary help service firm or third-party client to retaliate against a temporary laborer for exercising their rights under the Temporary Workers' Bill of Rights. In fact, the termination or disciplinary action by a temporary help service firm against a temporary laborer within 90 days of exercising their rights would raise a rebuttable presumption of retaliation. If a temporary worker is successful in alleging unlawful retaliation, they 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, reinstatement (if appropriate), and attorneys' fees and costs.

## Third-party Clients Can Be Held Liable for Violations

The Temporary Workers' Bill of Rights also allows an aggrieved temporary worker to institute a civil action in the Superior Court against both the temporary help service firm and the third-party client. The temporary help service firm and the third-party client could be held jointly and severally liable for payment of wages or any violation of this measure. The statute of limitations is six years from the final date of employment. The law also expressly provides that an action can be brought by one or more temporary laborers on behalf of themselves and other temporary laborers similarly situated. Thereby subjecting third-party clients to class action lawsuits.

## NJ Department of Labor FAQs

The Department of Labor [issued FAQs](#) regarding the Temporary Workers' Bill of Rights. One of the FAQs states that the Temporary Workers' Bill of Rights applies to temporary service firms even if they place workers outside the state. The FAQ does not address whether a third-party client located outside of New Jersey must comply with the provisions of the Temporary Workers' Bill of Rights. If the NJDOL concludes that a third-party client located outside of New Jersey is "transacting business within New Jersey" when it engages in business with a New Jersey temporary service firm and therefore, the third-party client is subject to the Temporary Worker's Bill of Rights.

**TAKEAWAY:** Employers utilizing temporary workers, in the categories designated above, should be aware of their obligations under the Temporary Workers' Bill of Rights and ensure that the Temporary Workers' Bill of Rights is complied with by the temporary service agency. Any non-compliance could result in liability to the third-party client. If you are an employer and need help regarding compliance with the New Jersey Temporary

Workers' Bill of Rights or any other federal or New Jersey employment law, contact [Tracy Armstrong](#) or any member of the Wilentz [Employment Law](#) Team.

[\[1\]](#) Designation by the Bureau of Labor Statistics of the United States Department of Labor.

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