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Massachusetts Enacts Burdensome New Standards for Staffing Companies

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On August 6, 2012, Massachusetts Governor Deval Patrick signed the "Temporary Worker Right to Know Act." The Act, which takes effect on January 31, 2013, places several new legal burdens on staffing agencies in Massachusetts, as well as companies that utilize their services. Specifically, the Act requires staffing agencies to provide detailed information to temporary workers regarding, among other things, their anticipated work duties and compensation. In addition, the Act limits the fees that can be charged to temporary workers for certain work-related materials and services.

Notice Requirements

The primary focus of the Act is to place new notice requirements on staffing agencies. Under the Act, all staffing agencies must provide each employee with the following information: (1) the name, address, and telephone number of the staffing agency, the agency's workers' compensation carrier, the worksite employer, and the Massachusetts Department of Labor Standards; (2) a description of the employee's position, whether it will require any special clothing, training, or licenses, and any costs charged to the employee for supplies or training; (3) the designated payday, hourly rate of pay, and whether overtime pay may occur; (4) the daily start and end time for each workday and, if known, the expected duration of employment; (5) whether the staffing agency or worksite employer will provide any meals to the employee and the charge for those meals, if any; and (6) details of the means of transportation to the worksite and, if applicable, any transportation fees charged by the staffing agency or worksite employer.

The required information must be provided to the employee in writing before the end of the first pay period, but the Act expressly permits staffing agencies to communicate this information to an employee over the telephone initially.

Any changes to these initial terms of employment must be immediately provided to, and acknowledged by, the employee. Staffing agencies also will be required to display a poster listing these requirements, as well as the telephone number of the Massachusetts Department of Labor Standards, in its places of business. The new law directs the Massachusetts Department of Labor Standards to create a sample poster.

There are two exemptions to these new notice requirements. First, the notice requirements do not apply to “professional employees,” as defined under the federal Fair Labor Standards Act. Second, the notice requirements do not apply to secretaries or administrative assistants “whose main or primary duties are described by the Bureau of Labor Statistics of the U.S. Department of Labor as involving one or more of the following: drafting or revising correspondence, scheduling appointments, creating, organizing, and maintaining paper and electronic files, and providing information to callers or visitors.”

Prohibitions and Limitations on Fees Charged to Workers

The Act also prohibits certain kinds of fees that may be charged to temporary workers by a staffing agency or the worksite employer, and establishes requirements for, and limits on, other types of fees.

First, under the Act, both staffing agencies and workplace employers will be prohibited from charging employees the staffing agency’s registration costs or the cost of procuring employment. The Act also expressly prohibits a staffing agency or a worksite employer from charging an employee a fee for the cost of a criminal offender record information (CORI) request.

Second, the Act states that a staffing agency or worksite employer may not make any deductions from the wages of an employee without the express written authorization of the employee. As discussed below, the Act also limits the amount of those deductions.

Under the Act, any fee charged by a staffing agency or a worksite employer for a bank card, debit card, payroll card, voucher, draft, money order, or similar form of payment of wages may not exceed the actual cost per applicant or employee. Similarly, the fee charged for any drug screen may not exceed the cost per applicant or employee.

The Act also provides that staffing agencies and worksite employers may not charge employees for “any good or service” unless there is a written contract stating that the employee understands that the purchase is voluntary, and providing that the staffing agency will not gain a profit from any cost or fee charged to the employee.

In addition, the Act provides that no fee charged by a staffing agency or worksite employer may cause the employee to earn less than the applicable minimum wage.

Lastly, the Act largely maintains the current restrictions relating to transportation fees for temporary employees. Specifically, those staffing agencies or worksite employers that provide transportation to a worksite may not charge an employee any amount over the actual cost of furnishing such services. Additionally, regardless of the actual cost, no amount for transportation may ever exceed three percent of the employee’s total daily wages or bring the employee’s wages below the minimum wage, nor may any transportation fee be assessed if the staffing agency or worksite employer requires employees to use said travel services. Furthermore, staffing agencies must reimburse an employee’s travel expenses if they send an employee to a worksite but no job is available for that day.

Additional Provisions

The Act also contains some additional restrictions on staffing agencies. Notably, the Act prohibits staffing agencies from knowingly issuing, distributing, circulating, or providing any “false, fraudulent or misleading information, representation, promise, notice or advertisement to any applicant or employee.” The Act also prohibits staffing agencies from assigning or placing an employee in employment “by force or fraud, or for illegal purposes, or 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.”

The Act also prohibits staffing agencies from refusing “to return on demand any personal property belonging to an employee or any fee or cost that is charged or accepted by a staffing agency or work site employer in excess of the amounts allowable” under the Act.

Implications for Employers

Failure to abide by the new requirements imposed by the Act may result in both civil fines and criminal sanctions.

Staffing agencies and employers who rely on their services should immediately take proactive steps to ensure their compliance with the new law. The new notice requirements will create a significant administrative burden for staffing agencies in the Commonwealth. Currently, worksite employers do not always provide staffing agencies with all of the information necessary under the Act, such as daily start times for the job or the job's expected duration. Once the Act goes into effect, staffing agencies will be required to not only obtain this information, but also to relay that information to employees prior to the end of the employee's first pay period. Because many temporary workers work at different worksites, or have new assignments, on a weekly or even daily basis, the staffing agencies providing such workers will need to provide multiple new notifications per pay period.

Although it is expected that the Massachusetts Department of Labor Standards will issue regulations regarding the Act, there is no guarantee that those regulations will be in place before the Act goes into effect on January 31, 2013. Staffing agencies and employers that have questions about the Act should contact their employment counsel.

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