

■ SPECIAL FEATURE

New law gives ‘right-to-know’ protections to temp workers

By William E. Hannum III

Massachusetts recently enacted legislation imposing new obligations on staffing agencies and worksite employers that use temporary workers and granting those workers a right to notice of certain terms of their employment.

The new statute, known as the “Temporary Worker Right to Know Act” (the “Act”) takes effect on January 31, 2013.

The Act creates additional protections for temporary employees in Massachusetts by:

- (i) requiring staffing agencies to provide certain information to temporary workers about their job assignments;
- (ii) limiting the fees that staffing agencies and worksite employers may charge temporary workers;
- (iii) prohibiting false advertising and certain other actions by staffing agencies; and
- (iv) providing for administration and

interpretation of the Act by the Massachusetts Department of Labor Standards, (“DLS”) and enforcement of the Act by the Massachusetts Office of the Attorney General, (“AGO”) which is empowered to impose substantial criminal and civil penalties on violators.

Job assignment notice requirements

As its name suggests, the new statute imposes a broad range of “job assignment” notice requirements on staffing agencies in Massachusetts. As a result, staffing agencies will soon be required to provide temporary employees with specific information in connection with *each* of their job assignments, as detailed below.

First, a staffing agency must provide employees with the name, address and telephone number of each of the following:

- (i) the staffing agency;
- (ii) the staffing agency’s workers’ compensation carrier;
- (iii) the worksite employer; and
- (iv) DLS.

The staffing agency must also provide a description of the position and any special requirements for it (such as clothing, equipment, training or licenses), as well as a specification of any costs to be charged to employees for supplies or training.

Employees must also be notified as to:

- (i) the designated pay day;

- (ii) the hourly rate of pay;
- (iii) the daily starting and anticipated end times;
- (iv) whether overtime work is anticipated; and
- (v) if known, the expected duration of the assignment.

In addition, the staffing agency must inform employees as to whether meals will be provided by the agency or the worksite employer, and the resulting cost, if any, to employees.

Finally, employees must be provided with details regarding the means of transportation to the worksite and any fees to be charged to employees for transportation services.

This information must be provided to employees when each new job assignment is made. The staffing agency may initially provide the information by telephone, but must then confirm the information in writing before the end of the first pay period for the assignment.

Any changes to the initial terms of the assignment must immediately be communicated to employees, who must acknowledge the changes in the terms. Although the new law is not clear on this point, we recommend that any amended notice and each worker’s acknowledgement be made in writing.

Staffing agencies are also obligated to post a notice in their offices setting forth information about employees’ rights under the Act and contact information for DLS. The notice must be posted in a conspicuous place at each location



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including litigation, business immigration, and education. Will gratefully acknowledges Julie A. Galvin of Schwartz Hannum PC for her help in preparing this article.

where an agency does business.

The Act directs DLS to create a sample notice that employers can post, although the sample notice has not yet been created.

There are significant exceptions to the notice obligations. In particular, professional employees, as defined under the National Labor Relations Act, are exempt from the statute's notice requirements.

Also excluded are secretaries and administrative assistants whose main duties are described by the U.S. Department of Labor's Bureau of Labor Statistics as involving one or more of the following:

- (i) drafting or revising correspondence;
- (ii) scheduling appointments;
- (iii) creating, organizing and maintaining paper and electronic files; and
- (iv) providing information to callers.

Regulation of fees charged to temporary workers

The new legislation also imposes a number of restrictions on the fees that staffing agencies and worksite employers may charge temporary workers.

First, the Act prohibits staffing agencies and worksite employers from assessing a fee to an employee for registering with a staffing agency or securing a job assignment. Similarly, an employee may not be charged a fee for a criminal offender record information ("CORI") request.

The statute also provides that a staffing agency or worksite employer may not levy a fee for a bank card, debit card, payroll card, voucher, draft, money order or similar means of payment, or for any drug screen, in excess of the actual per-employee cost.

The Act further prohibits staffing agencies and worksite employers from imposing a fee for transportation in excess of either (i) three percent of an employee's total daily wages, or (ii) the actual cost of transporting the employee to or from the designated work site.

Additionally, if a staffing agency or worksite employer *requires* employees to use its transportation services, the agency or employer is not permitted to charge employees for those services.

Further, if a staffing agency sends an

employee on a job assignment, and it turns out that work is not available that day, the staffing agency must reimburse the employee for his or her transportation costs.

The statute also provides that an agency or worksite employer may not impose a charge for any good or service that would cause the employee to earn less than the required minimum wage.

Finally, if a staffing agency or worksite employer imposes *any* charge on an employee for a good or service, the charge must be levied pursuant to a written contract with the employee. The contract must state clearly, in a language that the employee understands, that the purchase is voluntary and that the agency will not profit from the cost or fee charged to the employee.

Prohibitions against false information, improper purposes

The Act imposes various other prohibitions on staffing agencies aimed at further protecting temporary workers.

In particular, a staffing agency may not:

- (i) engage in false advertising aimed at applicants or employees;
- (ii) advertise under a name other than the agency's registered name;
- (iii) place an employee in an assignment by force or fraud;
- (iv) place an employee in an assignment that is for an illegal purpose;
- (v) place an employee in an assignment that violates state or federal laws governing minimum wages, child labor, compulsory school attendance or a required licensure or certification; or
- (vi) place an employee in an assignment at a location where there is a strike or lockout without first notifying the employee.

Further, staffing agencies are required, upon request, to return employees' personal property to them, and to reimburse employees for any fees or costs charged to them in excess of what the Act permits.

Administration and enforcement

The Act directs DLS to administer the statute by promulgating implementing regulations and carrying out inspections and investigations. As of this date, proposed regulations have not yet been promulgated, and

it is unclear whether they will be promulgated before the Act goes into effect in January.

The AGO will enforce the Act and, in this regard, may impose on violators the full range of civil and criminal sanctions available under Mass. Gen. Laws ch. 149, §27C. These sanctions include criminal penalties of up to two years in jail, fines of up to \$50,000, and civil penalties of up to \$25,000 per violation.

Recommendations For Agencies And Worksite Employers

As this discussion indicates, some of the new obligations created by the Act – particularly the notice requirements – are quite extensive. Thus, staffing agencies and worksite employers in Massachusetts should begin preparing now to comply with the Act by January 31, 2013, when the legislation goes into effect.

In particular, staffing agencies should review and revise, as necessary, their procedures for placing temporary employees, in order to ensure that employees are provided with all of the requisite information in a timely manner.

Specifically, staffing agencies should develop and make sure to provide temporary workers with the required "job assignment" notices and to display the required poster about the new Act.

Staffing agencies should also carefully review their advertising materials to be sure that they do not include any false or misleading statements.

Additionally, both staffing agencies and worksite employers should examine the fees, if any, that they charge to employees, in order to verify that the nature and amounts of those fees are permitted under the Act.

Staffing agencies and worksite employers should evaluate their policies and practices relating to any transportation services provided to temporary workers, in order to ensure that they are in compliance with the new legislation.

Finally, staffing agencies and worksite employers are strongly encouraged to train all managers with responsibilities touching on these issues, and to work with experienced counsel, to ensure compliance with these extensive new requirements. **NEH**