

Federal Court Blocks Illinois Equal Pay Amendment: What Employers and Staffing Agencies Need to Know

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A federal court in Chicago recently granted a preliminary injunction enjoining the Illinois Department of Labor from enforcing one of several amendments made in August 2023 to the Illinois Day Labor and Temporary Labor Services Act (the “Act”).

The amendments impose new duties on Illinois staffing agencies and employers that rely on temporary laborers. Several staffing agencies brought suit seeking to prohibit enforcement of three amendments to the law.

Which Amendment was Blocked by Judicial Order?

Section 42

The plaintiffs were successful only in obtaining an order blocking enforcement of the “equal pay for equal work” **Section 42 amendment**, which requires agencies to pay temporary employees—who work at a particular site for more than ninety days within a year—at least the same wages and “equivalent benefits” as the lowest paid, comparable, directly-hired employee employed by the third-party client. Agencies also could pay “the hourly cash equivalent” of the actual cost of benefits in lieu of providing the benefits.

Judge Thomas M. Durkin found that Section 42’s requirement that employers pay temporary employees either “equivalent benefits” or “the hourly cash equivalent” of benefits is preempted by the Employee Retirement Income Security Act (“ERISA”), a federal law governing the administration of health and welfare and retirement plans, among other employee benefits.

ERISA has a broad preemptive effect, and the Court reasoned that the amendments deny agencies the ability to administer their ERISA plans uniformly and intrude on ERISA’s objective of ensuring a uniform body of

benefits law.

Section 42 would have required staffing and temporary labor agencies to continually monitor, assess, and compare the benefit plans offered by client companies to the agencies' own plans. It also would have required the plaintiffs to make judgment calls about employees' eligibility and level of benefits on an individualized and ongoing basis. The cash alternative did not shield Section 42 from the injunction due to similar preemption concerns. Perhaps most significantly, state courts would have to provide their own interpretation of these plans, and ERISA preempts those determinations.

Which Amendments Remain in Effect?

Section 11

The Court did not block enforcement of Section 11 of the Act, which requires an agency to give written notice to a temporary laborer of a "labor dispute" at a third-party client assignment. It also grants temporary laborers the right to refuse the assignment.

The Court rejected the plaintiffs' argument that Section 11 of the Act regulates conduct which Section 7 of the National Labor Relations Act (the "NLRA") protects. Section 7 of the NLRA "protects an employee's right to form, join, or assist labor organizations" and also the right to engage in "concerted action" for mutual aid and protection with respect to terms and conditions of employment.

The Court concluded that providing notice of a labor dispute and giving employees the right to an alternative work assignment if an employee chooses not to accept the assignment at a site where a labor dispute is occurring does not intrude on any right protected to employees by Section 7.

Section 67

Lastly, the Court did not prohibit enforcement of Section 67 of the Act, which grants a private right of action to any "interested party" to enforce these and other obligations. Just who is an interested party? The plaintiffs argued that Section 67 violates constitutional due process because there is no requirement for an "interested party" to be injured by the violation.

Significantly, the Court said the plaintiff's private right action argument was more about standing than it was about due process. However, the Court could not judge whether standing is proper in a future, hypothetical suit and subsequently rejected the plaintiff's argument against Section 67.

Takeaways for Illinois Employers

- For the time being, employers in Illinois will not have to comply with the majority of the equal benefits provisions of the Illinois Day Labor and Temporary Labor Services Act.
- Both staffing agencies and their clients should obtain legal advice before using temporary workers in a strike situation.

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