

Illinois' Day and Temporary Labor Services Act - 2023 Safety & Training Mandates - Q&A

Illinois HB 2862

Regarding HB 2862, the "90" Language in the bill says 90 days worked or 90 days assigned and that a day is a calendar day, but does not say 90 calendar days, it brings up intermittent work and counting each day as a day. Can you provide any clarification on this?

This is another point of contention as the statute and emergency regulations are not clear. The conservative approach is recommended until we obtain more clarity from the legislature or the IL DOL. With that in mind, we should be looking at an assignment that lasts 90 calendar days in any 12-month period of time from August 4, 2023 forward.

Do we have an ADDITIONAL 90 days from 8/4 (first part of November MEANING around Jan 4, 2024) to administer the equal pay / benefits component?

The 90 calendar day period is from anyone assigned or working from August 4, 2023 onward.

Examples:

- Any worker assigned to client x on or before August 3, 2023 would be entitled to equal pay and benefits starting on November 3, 2023 --- assuming they are still with that same client.
- Any worker assigned to work at client y on November 1, 2023 for the first time, would be entitled to equal pay and benefits starting on January 31, 2024.

Does the new law regarding equal pay / benefits for temps include temps that are not through an agency? For context, our temps are directly on our payroll (typically one to 3 months) and some are then hired as regular full-time employees and we do not count their temp time for any benefits.

No. Direct employees who are seasonal or on the payroll of the user client on a temporary project or basis are not workers who fall under the IDTLSA.

Who must provide the same benefits? I assume it is the temp agency.

This is something we are still waiting to secure more clarity on. Fortunately, we have a couple more months before the Equal Pay & Benefits Mandate is upon us. The temporary staffing agency must ensure that it is paying its own workers the same as the user client's comparable employee (in both hourly wages and benefits).

The comparative analysis and the Equal Pay & Benefits Mandate is unique and went beyond today's webinar. Be assured, however, that we will be discussing this mandate in the coming weeks -- hopefully obtaining more clarity from the IL DOL.

Does this apply to interns, or strictly just temporary workers from a staffing agency?

The IDTLSA has very specific coverage provisions. Student interns would not be covered unless there were some fairly unusual circumstances whereby a temporary agency is supplying "interns" to perform manual labor for a user client.

Under this law, if an employer (not a staffing agency) leases workers to another employer, would they be considered an "agency"?

The IDTLSA is not designed to regulate leasing arrangements. However, we implore you to seek competent legal counsel unique to your business operations and obtain a formal legal opinion.

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Can you please confirm what the "host employer" is - Employer of record or the client where the employee will be physically working?

In reference to host employer, that term is not in the IDTLSA. Any reference to that term would have been made regards to the user client. User clients (as the host of the worker) has very specific obligations. Indeed, OSHA is focused on the user client (or, host employer) because the worker is performing at the user client's facility.

I have a few clarification questions: If an employee is continuously working for a longer period (say 2 years), they must retake general safety training each year to maintain compliance, is that correct?

Correct. It needs to be conducted annually by the temporary agency.

Along with the agency keeping records of the safety training itself, do we now also need to include an attestation from the employee that they completed the trainings?

Absolutely. Yes!

With the comprehensive safety training, do we need to help create safety trainings for each Client or can we have an overall general training for everyone?

The training needs to cover the general hazards that your employees will be exposed to in your clients' facilities. To the extent you can prepare one training/orientation that covers all hazards in all of your clients' facilities, that would be best. (It certainly is possible—I have seen training videos/presentations that cover all typical hazards in general industry facilities—i.e. fall protection, lock-out/tag-out, ladders, guarding, confined space, hazcom, etc.). That said, if your clients and/or the hazards in their facility are so diverse that is not possible, then you should do a training/orientation for each client or type of client. IDOL identifies typical hazards that require training in section 260.405(c)

How will an agency possibly provide different benefits, such as health insurance, for every client employer they use?

That is not what the law requires. This is the equal pay & benefits part. We did not get into this today in any detail. We are waiting for more clarity from the il dol or legislature. However, please know that the temporary agency can take credit for what they provide to the worker. If the user client's comparator is paid more in benefits than the temporary worker, then the agency must pay out a cash equivalent of any discrepancy. Make sense? Again, hoping we get more clarity soon. But, keep in mind, the temporary agency can pay any cash equivalent of benefits to ensure equal pay & benefits are being paid to the worker.

I was told if a temp ends an assignment by 90 days, they are not allowed to return to that client for 12 months. Is this correct info?

Not correct. They can return before that 12-month time period. However, the Equal Pay and Benefits Mandate would apply. Some user clients will not allow any temporary worker to stay due to the financial strain on labor costs this law creates.

How can we contact the IL DOL directly?

Please visit the IL DOL's website on this subject at <https://labor.illinois.gov/laws-rules/fls/day-temporary-labor.html>