

Third Circuit Upholds New Jersey's Temporary Workers' Bill of Rights

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On July 24, 2024, the Third Circuit Court of Appeals [affirmed](#) the denial of a preliminary injunction seeking to bar enforcement of New Jersey's Temporary Workers' Bill of Rights Law (the "Law"). The Circuit Court found that the Law does not violate the dormant Commerce Clause of the U.S. Constitution, which prohibits states from enacting measures that discriminate against or unduly burden interstate commerce.

The Law, which took full effect on August 5, 2023, provides comprehensive protections for certain temporary workers in New Jersey.

Temporary Workers' Bill of Rights

The Law applies to each temporary laborer who is employed by a covered temporary help firm who either: (1) has been assigned by the firm to work in a designated classification placement within New Jersey; or (2) has been assigned by the firm to work in a designated classification outside of New Jersey, but who has his or her primary residence in New Jersey. Among its provisions, the Law includes requirements for recordkeeping, state certification, and joint liability for staffing firms and their clients. Notably for employers, the Law also mandates that temporary workers receive the same average rate of compensation and average cost of "benefits" (or a cash equivalent thereof) comparable to permanent employees performing the "same or similarly substantial work" at the client company. More details about the scope of the Law can be found on our earlier blog [here](#).

Third Circuit Opinion

After being denied a preliminary injunction by a District of New Jersey court, a coalition of staffing agency industry groups argued on appeal that the Law violates the dormant Commerce Clause and is state overreach. Specifically, the groups argued that the Law imposes undue burdens on interstate commerce by effectively setting wage standards for temporary workers that disproportionately affect in-state staffing firms over out-of-state firms that do not have to comply with the Law. The groups further argued that the Law is akin to an improper price-restricting measure that acts as a tariff. They also asserted that the terms “benefits” and “same or substantially similar work” in the equal pay provisions are unduly vague.

The Third Circuit panel disagreed. The panel reasoned that any economic impact of the Law is incidental, and any price constraining measures are only to create consistency between full-time and temporary workers, though the Panel admitted that an out-of-state consumer may opt for an out-of-state staffing agency who does not have to comply with the Law. The panel further found that the Law could not constitute a violation of the dormant Commerce Clause since it does not favor in-state commerce over out-of-state commerce.

In addition, the panel held that neither the definition of “benefits” nor “same or substantially similar work” is so vague as to void the Law. The panel noted that “[t]he presence of ‘some ambiguities’ does not prevent enforcement of an economic regulation; rather, it is void for vagueness only if it is ‘so vague as to be no rule or standard at all.’”

Implications for Employers

While the Law remains in full effect for the moment, the Third Circuit’s decision is not the end of the story. The industry groups recently filed an amended complaint in the district court, asserting that the Law is preempted under the Employee Retirement Income Security Act of 1974 (ERISA) as to the Law’s benefits requirements. A motion to enjoin the benefits provisions is currently pending.

In addition, as we’ve previously [discussed](#), New Jersey’s Department of Labor & Workforce Development (the “Department”) has proposed rules for implementing the Law. Employers and staffing firms covered by the Law should be sure to review the Department’s [website](#) and stay up-to-date on the proposed rules to ensure continued compliance.

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