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Federal Court Once Again Upholds Enforcement of New Jersey's Temporary Workers' Bill of Rights

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The district court has once again upheld enforcement of the New Jersey Temporary Workers' Bill of Rights (the "Law"). The decision comes in response to a follow-up challenge by a coalition of staffing agency industry groups, asserting that the section of the Law requiring temporary workers be paid an amount equal to the average pay and benefits received by similarly situated permanent employees is preempted by the federal Employee Retirement Income Security Act ("ERISA"). For a summary of the Law's requirements, please see our earlier blog here.

As we previously reported, the industry groups initially sought to halt enforcement of the Law in its entirety on constitutional grounds, arguing that the Law violates the dormant Commerce Clause and is state overreach. A District of New Jersey court denied the groups' motion for preliminary injunction, and that decision was upheld on appeal by a Third Circuit panel.

Approximately one year after first seeking injunctive relief, the industry groups amended their complaint to assert that Section (7)(b) of the Law is preempted by ERISA and should not be enforced. Section (7)(b) requires a temporary worker "not be paid less than the average rate of pay and average cost of benefits, or the cash equivalent thereof, of employees of the third party client performing the same or substantially similar work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions for the third party client at the time the temporary laborer is assigned to work at the third party client." The groups in turn filed a motion for preliminary injunction on ERISA-preemption grounds before the district court.

In denying the motion, the court held that the industry groups failed to make the necessary showing of irreparable harm. The court focused on the groups' one year delay in pursuing injunctive relief based on ERISA preemption, noting that "how urgently a party has pursued their claims" is relevant to the irreparable harm analysis and pointing out that ERISA preemption has been litigated "for decades."

The court also found that granting injunctive relief now would substantially disrupt the status quo. The court noted that the equal benefits provision has now been in place for over a year and the State has issued proposed regulations under, and already established mechanisms to enforce, the Law. The court also noted that "many individual [temporary] workers, and their families, have likely made important life decisions in reliance upon continued receipt of these increased wages and benefits [required pursuant to Section (7)(b)]."

Finally, the court found that it was unclear based on the current record whether the industry groups were likely to succeed on the merits of their claim. Among other reasons cited by the court, it noted that "it is not clear if the Act requires staffing agencies to establish an ERISA-governed benefit plan" such that preemption would likely apply. As a result, the Law's requirements presently remain in full effect. Staffing agencies and employers can read more about the proposed regulations for the Law here and should be sure to monitor the NJ Department of Labor & Workforce Development's website to ensure continued compliance with the Law.

Related Professionals

- **Evandro C. Gigante**
  Partner
- **Laura M. Fant**
  Special Employment Law Counsel