American Staffing Association
277 South Washington Street, Suite 200 ▪ Alexandria, VA 22314-3675

703.253.2020
703.253.2053 fax
asa@americanstaffing.net
americanstaffing.net

July 21, 2025

Anna Koeppel
Legislative and Policy Director
Illinois Department of Labor
524 South 2nd Street, Suite 400
Springfield, Illinois 62701

RE: Notice of Proposed Amendments
Title 56: Labor and Employment Chapter I: Department of Labor
Subchapter B: Regulation of Working Conditions
Part 260 Day and Temporary Labor Services Act (56 Ill. Adm. Code 260)

Dear Ms. Koeppel,

The American Staffing Association submits these comments on the proposed amendments to Part 260 of the regulations under the Illinois Day and Temporary Labor Services Act (820 ILCS 175) ("Act") implementing Public Act 103-437 and Public Act 103-1030.

The Association appreciates the Department of Labor's consideration of the comments we submitted on the prior proposed rules, some of which are reflected in the current proposal. We have a few remaining comments for consideration as set forth below. We note that the current proposed rules do not include provisions relating to the equal benefits provisions of the Act which are the subject of litigation and which has been stayed until 45 calendar days after the effective date of final regulations on those provisions.

Section 260.100 – Definitions

The definition of "retaliate" includes "to change the terms or conditions of employment." On its face, this could literally be construed to mean *any* change regardless of its significance or whether it adversely affects the laborer. This would result in an influx of retaliation claims for changes that are not in any sense retaliation. To avoid such misconstruction, the definition should be clarified to provide: to "materially and adversely" change the terms or conditions of employment.

Section 260.220 – Complaints by Interested Parties

Subsection (b) lists various circumstances that require the Department to issue "Right to Sue" letters. To ensure that parties understand why the letter is being issued, the provision should be amended to expressly require that such letters identify the specific circumstance (e.g., non-response from the named parties, unjustified allegations, no jurisdiction, etc.). In a similar vein, subsection 260.220(e) would allow the Department, when it issues a Right to Sue Letter, to investigate matters not specifically identified in the complaint against the named party. As a matter of basic due process, the rule should be amended to require that any such matter be specifically identified in the letter.

Section 260.310—Content of Application to Register

Subsection 260.310(m) requires a copy or scanned image of a government-issued photo identification card of the individual submitting the application and of the president or owner of the day and temporary labor services agency. ASA members have expressed privacy concerns relating to unredacted personal information retained by the Department. An Employer Identification Number (EIN) should suffice. If the Department's is concerned about agency's changing owners to avoid registration, exceptions to the ID requirement could be made for agencies with longstanding certifications, i.e., for specified number of years.

Section 260.400—Required Disclosures to Laborers

Subsection 260.400(a)(4) added the name of the County in which a day or temporary laborer is assigned—in addition to the name and address of the location. This is superfluous information that will require temporary labor services agencies that have already developed compliant employee notice forms to completely revamp their forms at great expense.

Section 260.400(c) requires an updated employment notice after 48 months or 4160 hours. This is requirement can be satisfied through compliance with the notice requirements of Illinois wage theft law (820 ILCS 115/10(a) which requires employers to notify employees, at the time of hiring, of the rate of pay and of the time and place of payment and "*also of any changes in the arrangements, specified above, prior to the time of change."* Accordingly, we propose that Section 260.400(c) be amended to specify that agencies can comply via the notice provided pursuant to 820 115 ILCS Section 10(a).

Section 260.400(d)(2) requires, in the event a strike, lockout, picket, bannering, handbilling or other work stoppage exists because of a labor dispute, that temporary labor agencies notify laborers of their right to refuse an assignment in the laborer's *"*primary language.*"* However, the Act at Section 11 (a), requires only that the notice be provided in a language the laborer "understands,*"* which is consistent with OSHA guidance.[1] Therefore, Section 260.400(d)(2) should be modified to conform with both the Act and OSHA.

Section 260.402(c) states that "[a] day and temporary labor service agency shall not send a day or temporary laborer to a place where a picket, bannering, handbilling, or other work stoppage exists because of a labor dispute unless it has complied with the notice provision of Section 260.400(a)(9)." Section 260.400(a)(9) is a citation to the 2023 proposed rules. The relevant notice provision in the current proposed rules is Section 260.400(d)(2).

Finally, per Section 260.402(d) of the proposed regulations, agencies are subject to a private right of action if they fail to notify laborers of a labor dispute. The regulations should provide that failure by the client to notify the agency, per Section 260.540, of a strike or lockout at the assignment location is a defense to any such action.

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[1] *See* OSHA letter of interpretation number 20071001-7893 [July 26, 2010]; OSHA memo, David Michaels, PhD, "OSHA Training Standards Policy Statement," April 28, 2010.

Section 260.404 —The Proposed Regulations Should Clarify that Clients Should Conduct Site-Specific Training

Section 260.404 of the proposed regulations imposes new training requirements. Subsections (c) and (d) may be read to require temporary labor agencies to meet certain training requirements that can only be met by the client. Specifically, Section 260.404(c) states that "training shall reflect all existing job hazards known to the third party client company or the day and temporary labor service agency, including hazards that have been reported to the client or the agency by a day or temporary laborer." It then lists nine site-specific hazards that *only* the third-party client is in the position to identify, like fall hazards, electrocution hazards, machine-related hazards, and emergency action plans.

Similarly, Section 260.404(d) states that "training shall include information regarding actions by the third-party client to eliminate, control, and otherwise mitigate or protect workers from the hazards, as well as what steps workers should take to avoid or control the hazards… [including] emergency action plans, emergency evacuation procedures, and shelter-in-place procedures." Again, this language refers to *site-specific hazards and safety information* that are the responsibility of the client.

Section 85(d)(3) of the Act requires temporary laborers to be provided "specific training tailored to the particular hazards at the client company's worksite consistent with training requirements provided for in standards, guidances, or best practices" issued by federal OSHA. Section 85(d)(4) of the Act requires client companies to document and maintain records of the site-specific training. Federal OSHA has many temporary worker safety-specific resources that demonstrate that host employers should provide site-specific training and protective equipment to temporary workers, and identify and communicate worksite-specific hazards (https://www.osha.gov/temporaryworkers).

Therefore, to comply with the Act's requirements that temporary workers receive site-specific training consistent with OSHA guidance and best practices, and to ensure laborers get training from the client, the party in the best position to provide it, we propose that the employee notice provision of subsection 260.400(d)(1) be amended to include the name of the third-party client representative responsible for providing worksite training and that subsection (c) and (d) of Section 260.404 be revised as follows:

Proposed Revision of Section 260.404 Training (**changes in bold)**

* * * *

(c) The training shall reflect all existing job hazards known to the ~~**third party client company or the day and**~~ temporary labor service agency, including hazards that have been reported to the ~~**client or the**~~ agency by **the client or** a day or temporary laborer. This must include, but is not limited to, any of the following types of hazards which are or could be present on the job site**, except to the extent such hazards are covered by site-specific training required to be provided by the third-party client pursuant to Section 260.406:**

* * * *

(d) The training shall include information regarding actions **expressly communicated to the temporary labor service agency** by the third-party client to eliminate, control, and otherwise mitigate or protect workers from the hazards, as well as what steps workers should take to avoid or control the hazards… [including] emergency action plans, emergency evacuation procedures, and shelter-in-place procedures.

Section 260.408 – Application Receipt

Subsection 260.408 requires day and temporary labor service agencies to provide job applicants with, or, if using a third party to facilitate hiring, ensure that the applicant receives, a confirmation that the applicant sought work, signed by an authorized agent of the day and temporary labor service agency. Temporary labor service agencies do not have control over the confirmations sent by third-party job websites, such as LinkedIn, Indeed, ZipRecruiter, etc. Nor can they "sign" application confirmations issued by such third parties. Therefore, this section should be amended to indicate that application receipts signed by a representative of the agency are required only when applicants apply directly with the agency. Further guidance is required as to what steps an agency should take to "ensure" that applicants receive signed confirmation from third parties.

In addition, subsection 260.408(a) requires that the application receipt includes the location of a "branch office," a requirement not contained in the statute. The rule should be amended to say "if applicable" since most applicants today apply for jobs online, not at a branch office. Moreover, temporary staffing agencies have already invested in the creation of application receipts which would be costly to revise.

260.420—Inspection and Maintenance of Records

Subsection 260.420(b) requires day and temporary labor service agencies, upon request from the Department, to provide the Department with paper or machine-readable electronic records to the Department within five calendar days following a request. We propose changing the calendar to business days to provide agencies with a more reasonable time within which to comply.

Section 260.445—Equal Pay for Equal Work Where There is No Directly Hired Comparator Employee

Section 445(a)(1) (A) addresses how to apply the equal pay provisions where there is a directly hired comparator employee of the third party client with the same or substantially similar level of seniority at the company and performing the same or substantially similar work on jobs the performance of which requires substantially similar skill, effort, and responsibility, and that are performed under similar working conditions.

Section 445(a)(1)(B) provides guidance on how the equal pay provisions apply where there is a *not* a directly hired comparator employee with the same or similar seniority. For clarity and consistency, Section 445(a)(1)(B) should be amended to include a work test similar to the one that applies under Section 445(a)(1)(A), as set forth below **(changes in bold)**.

> B) If there is not a directly hired comparator employee of the third party client **performing the same or substantially similar jobs,** the agency shall pay that laborer not less than the straight-time hourly rate of pay or hourly equivalent of the lowest paid directly hired employee of the third party client who is entitled to overtime under the Fair Labor Standards Act of 1938, as amended, with the closest level of seniority at the third party client **working on jobs the performance of which require substantially similar skill, effort, and responsibility, and that are performed under similar working conditions**.

This clarification is essential to ensure an "apples to apples" comparison with respect to the work being performed—i.e., even if the job duties of the closest client employee in seniority are not the same or substantially the same, the work still must require substantially similar skill, effort, and responsibility, and be performed under similar working conditions as the work performed by the agency employee. It would render the concept of "equal pay" meaningless if, for example, a temporary floor sweeper in a warehouse had to be provided wages equal to lowest paid client employee, such as a machine operator, whose work is totally *dissimilar* in terms of skill, training, effort, responsibility, and working conditions.

Section 260.450—Wage Payment and Notice

Subsection 260.450(b) requires laborers placed at other sites than the one initially contracted for to be paid a minimum of 2 hours "in addition to all hours worked by the day or temporary laborer during that shift." The wording is confusing and could be read as requiring payment of hours worked plus two additional hours. We suggest clarifying the provision to provide as follows:

> However, if the day and temporary labor service agency is able to place the day or temporary laborer at another work site during that same shift, the day or temporary laborer shall be paid by the agency ~~**a minimum of 2 hours of pay,**~~ at the agreed upon rate of pay **for all hours worked on the shift but no less than 2 hours**~~**, in addition to all hours worked by the day or temporary laborer during that shift**~~. [820 ILCS 175/30]

Section 260.470—Placement Fees

Temporary labor agencies often charge clients placement fees when a client hires a temporary employee assigned by the agency. The purpose is to allow the agency to recoup the reasonable costs of recruiting, screening, and onboarding the employee.

Section 40 of the Act and Section 260.470(a) of the proposed regulations allow placement fees provided the fee does not exceed the equivalent of the total "daily commission rate" the agency would have received over a 60-day period, reduced by the equivalent of the "daily commission rate" the agency would have received for each day the employee performed work for the agency in the preceding 12 months. The problem with this formulation is that "commission rate" is undefined and the method of calculating placement fees is inconsistent with temporary labor agency payroll systems.

Like the Initial Waiting Period, Placement Fees Should be Calculated Based on Hours Worked, not Days.

By amending the Act to provide for calculating the initial waiting period based on 720 hours of work instead of 90 days, the legislature recognized that current temporary labor agency payroll systems are designed to track employee work based on hours, not days. Likewise, placement fees should be calculated based on hours, not days. Hence, we propose that Section 270.470 be revised to provide that the placement fee can be calculated based on 480 hours (60 x 8) instead of 60 days.

In addition, our proposed revision clarifies that the hours test be applied per client (like the 720-hour waiting period) and proposes a definition of "commission rate." Also, for clarity, we propose a new subsection (e) defining "skilled labor" as provided in Section 40 of the Act which excludes such labor from the placement fee cap.

Proposed Revision of Section 260.470 Placement Fees **(changes in bold)**

a) A day and temporary labor service agency may charge a placement fee to a third-party client who ~~employs~~ **directly hires** a day or temporary laborer for whom a contract for work was effected by the agency. The fee shall not exceed the total ~~**daily**~~ **hourly** commission rate the agency would have received **from that third-party client for up to 480 hours of work performed by the day temporary laborer for such client** ~~**over a 60 day period**~~ reduced by the total amount of the ~~**daily**~~ **hourly** commission rate the agency has received ~~**each day**~~ **for the hours** the day or temporary laborer has performed work for the agency in the preceding 12 months (i.e., ~~daily~~ **hourly** commission rate times ~~**60**~~ **480**) minus (~~**daily**~~ **hourly** commission rate times number of days worked for the agency in the prior 12 months)).

b) "Commission rate," as used in this Section, means the hourly rate the agency charges a third-party client (i.e., the bill rate) minus the hourly wage rate the agency pays the laborer for work performed on assignment with such client.

~~**Days worked at the agency in the 12 months prior to January 1, 2006 shall be included for purposes of calculating the maximum placement fee.**~~

c) A day or temporary laborer, third party client, or interested party may file a complaint with the Department if they have knowledge that a day and temporary labor service agency has charged a placement fee or threatened to charge a placement fee in violation of this Section or Section 40 of the Act. However, nothing in this Section or Section 40 of the Act requires a third party client to directly hire a day or temporary laborer who has performed work beyond the time period in which a placement fee may be charged.

d) Example: Worker A is employed by Temp Agency A since February 1, 2024. Temp Agency A dispatches Worker A to Client B or Client C as needed on different days,

and charges **Client C a $6 hourly commission rate** ~~that~~ **and** Client **B** a $~~**50**~~ **$6.25 hourly** commission **rate** ~~**per day on top of the worker's compensation**~~. Between February 1 and April 1, 2024, Worker A works ~~**25 days**~~ **200 hours** for Client B and ~~**15 days**~~ **120 hours** for Client C. Client B wishes to hire Worker A directly as an employee. Temp Agency A may charge Client B no more than $1,000 as a placement fee **based on B's Commission rate** according to the following calculation:

$~~**50**~~ **$6.25** ~~**daily**~~ **hourly** commission rate multiplied by **480 hours** ~~60 = $3,000.~~ **= $3,000.**

$~~**50**~~ **$6.25** ~~**daily**~~ **hourly** commission rate multiplied by **320 hours** ~~**40 days of work = $2,000.**~~ **= $2,000.**

~~**$3,000**~~ **$3,000** minus ~~**$2,000**~~ **$2,000** = ~~$1,000~~ **$1,000** allowable placement fee.

e) "Skilled Labor."—As provided in Section 40 of the Day and Temporary Labor Act, placement of a day or temporary laborer by a day and temporary labor service agency to provide skilled labor shall not be subject to any placement fee cap. For purposes of this Section, the skilled labor exclusion applies only where the agency performs an advanced application process, a screening process, which may include processes such as advanced testing, and a job interview.

Respectfully submitted,

AMERICAN STAFFING ASSOCIATION

By

Edward A. Lenz, Esq.
Senior Counsel
elenz@americanstaffing.net