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STAFFING Success

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2023 ASA Legislative Recap

NURSE STAFFING AND WORKER RIGHT-TO-KNOW BILLS TAKE CENTER STAGE

The association dedicated **extensive efforts to advocate throughout another pivotal year for the staffing industry.** Ending 2023 on a positive note, the ASA legal team and its network were **instrumental in blocking or amending numerous harmful laws and regulations.** Here's a recap of the past year's legislative activity.

By Toby Malara, Esq.

When it came to predicting legislative challenges headed into 2023, changes in Congress and several state legislatures made that an almost impossible task. With Covid in the rearview mirror, it appeared that legislators would turn their attention to more traditional labor and employment issues, such as minimum wage increases, predictive scheduling, and pay equity. And while we certainly saw those issues, efforts to regulate health care staffing in numerous states continued, occupying the majority of the American Staffing Association's legislative activities.

ASA also joined lawsuits to fight back against newly enacted, "first-of-its-kind" temporary worker pay equity laws in New Jersey and Illinois.

Through it all, ASA worked hard and secured victories to ensure that its members could remain unencumbered in placing people in jobs. Here is a review of the major legislative advocacy efforts during 2023. >>>

California

AB 331 would establish various requirements for the use of automated decision tools (ADTs), including in the employment context. Among other things, the law would require that developers and users of ADTs prepare yearly impact statements addressing the use and validity of the ADTs, prepare governance programs to manage the risk of algorithmic discrimination, notify all persons subject to a consequential decision made by an ADT, and provide an alternative selection process for individuals who choose not to be subject to ADT evaluation.

Amendments proposed by ASA would, among other things, limit the circumstances in which candidates may opt out of ADT evaluation, thereby ensuring that staffing firms could continue to place candidates in jobs in a timely manner.

SB 809 would eliminate an employer's ability to consider an applicant's conviction history save for a few very narrow exceptions, such as when considering applicants for jobs in industries the government deems sensitive in nature. When criminal history may be considered, the bill would prohibit an adverse action against an applicant due to a delay in obtaining information regarding the applicant's conviction history, even where that delay was outside of a company's control.

ASA joined a coalition of employer groups in opposing the bill on the basis that it would prohibit staffing firms from conducting criminal background checks for most jobs, including in cases where staffing firm clients require background checks of potential candidates.

Following weeks of discussions and negotiations, both AB 331 and SB 809 were moved to the inactive file and were not taken up in 2023. Both bills can be reconsidered during the 2024 legislative session, and ASA will re-engage if necessary this year.

Colorado

HB 23-1030: This bill originally contained an outright ban on conversion fees. ASA met with the bill's sponsors and testified against the bill. As a result, the bill's sponsor agreed to allow nurse agencies to charge clients a conversion fee if the client hires an agency employee during the first 30 days of an assignment. The law went into effect May 1.

HB 23-1118: A bill to require businesses to offer additional work hours to existing employees before hiring a new employee, "including hiring through the use of staffing agencies." ASA, with the help of

its lobbyist, met with the sponsor of the bill to voice strong objections and explain the harm the bill would cause to workers. As a result of these efforts as well as strong opposition from the business community, the bill died when the legislature adjourned.

Connecticut

HB 6859 would have required businesses—including staffing agencies—to provide employees with advance notice of work schedules and changes in schedules. The bill also required businesses to "make every effort" to schedule existing employees before hiring a new employee from a staffing agency or other outside entity.

ASA submitted written testimony to the Joint Labor Committee in opposition to the bill and the association's outside lobbyist arranged for a meeting with the bill's sponsors to discuss our concerns. While the bill was passed out of committee, it was not brought to the House floor for consideration and died when the legislature adjourned.

Delaware

HB 204: An effort late in the session to regulate the nurse staffing industry, focused on creating a rate cap system, died when the legislature adjourned. ASA's lobbyist met with proponents of the bill and the bill's sponsors and explained the problems a rate cap system would present to the state's health care system. A study group will be formed to discuss next steps.

Illinois

H.B. 2862: This legislation, which was signed into law by Gov. J.B. Pritzker on Aug. 4, amends the Illinois Day and Temporary Labor Services Act. Among other things, the amendments provide that

- Temporary employees must be paid the same or similar pay and benefits received by equivalent direct-hire employees after working for more than 90 calendar days for a client.
- Employees must be advised that they can refuse assignments to sites involving labor disputes.
- Registration fees will increase to \$3,000 per year per agency; \$750 for each branch office.

ASA, along with its Illinois lobbyist Paul Rosenfeld, met with the bill's sponsors and House and Senate leadership and secured the following modifications that significantly mitigate the impact of the amendments:

- Removal of the requirement to collect race and ethnicity data on every applicant.
- Removal of the requirement to disclose to employees the hourly bill rate charged to clients.



- Increased the waiting period, to comply with the pay and benefits mandate, from 60 to 90 days.

HB 3641: In November, during the legislative veto session, the legislature passed a technical cleanup bill that also contained language delaying the equal pay and benefits mandate under the Day and Temporary Labor Services Act. This change now provides that calculation of the 90-day waiting period will not begin until April 1, 2024.

The amendment was passed at the urging of ASA, the Staffing Services Association of Illinois, and the Illinois Search and Staffing Association. Industry representatives met with House Assistant Majority Leader Jay Hoffman (D), who was instrumental in achieving the delay.

ASA filed extensive comments on the proposed regulations and will continue to pursue legislative fixes.

Indiana

HB 1461 requires, among other things, the registration of health care staffing firms, which will include a schedule of all fees and charges to be made by the agency. Guidance from the Indiana Department of Labor states that “A price range of fees, charges, or commissions that an agency may charge over the course of the registration period specific to each healthcare personnel type is sufficient to meet this requirement.” The law went into effect July 1.

Kansas

HB 2265: This bill required temporary nurse agencies to register annually with the state and file quarterly reports that included a detailed list of the average amount charged and paid for each individual agency worker category. The bill was similar to legislation ASA defeated in 2022, and ASA’s lobbyists met with committee members and House leadership to reiterate our concerns. While the bill failed to advance out of committee, several attempts were made to attach it to other bills. ASA stayed engaged throughout the process and kept the bill from advancing in any form.

Missouri

SB 261: This bill attempted to add nurse staffing services as a covered service under the state’s anti-price-

gouging statute. The bill exempted price increases if they were reflected in the pricing of other providers in the marketplace. ASA monitored the legislation and was prepared to engage if it appeared the bill would be amended to remove the above-mentioned exemption. The bill never received a hearing and died when the legislature adjourned.

New Hampshire

SB 149 establishes a registration process for nurse agencies. The original bill would have imposed onerous recordkeeping and reporting requirements, but ASA’s lobbyist was successful in getting the bill amended into a simple registration bill. The amended bill was signed by the governor on Aug. 8.

New Jersey

Conditional veto of A. 1474: After a 16-month battle and three previous unsuccessful attempts, in February 2023 the New Jersey Senate finally pushed this legislation across the finish line, approving the measure by a 21–15 vote. The Assembly had approved Gov. Murphy’s conditional veto bill back in October 2022. The governor signed the bill into law immediately.

Over the prior 10 months, ASA and its affiliated chapter, the New Jersey Staffing Alliance, along with their member staffing agencies, engaged in an extensive grassroots campaign explaining to legislators why the bill was bad for workers and the staffing industry. These efforts not only led to several harmful provisions being removed from the bill, but they also led to three unsuccessful attempts by the Senate to pass the bill. However, ultimately the overwhelmingly pro-labor forces prevailed.

A. 1474, which applies to construction, light industrial, and other workers—but not professional or clerical workers—among other things

- Mandates temporary employee wages and benefits equivalent to those received by client employees performing similar work
- Limits conversion fees
- Prohibits agencies from charging a fee for providing transportation >>>

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New York

Article 29-K: The law imposes significant reporting requirements and bars conversion fees. ASA and the New York Staffing Association submitted several proposals to simplify the reporting and also proposed an exemption from the conversion fee ban to allow staffing firms to recoup the reasonable costs of recruiting and placing temporary health care workers. We asserted that staffing firms' ability to recoup those costs is essential—just as traditional employment agencies can recover the cost of finding candidates for permanent hire in fees charged to clients. The law also gives the commissioner authority to impose rate caps, but thus far no action has been taken to do so. ASA and NYSA are continuing their efforts to mitigate the impact of the law through legislative amendments or guidance from the Department of Health.

Ohio

HB 33: The House-passed version of the state's annual budget contained language regulating nurse staffing firms, including language establishing rate caps and requiring nurse staffing firms to submit a schedule of rates to be charged to facilities. ASA's lobbyist was successful in getting the Senate



to remove all provisions relating to nurse staffing, and the final negotiated budget signed into law did not include any health care staffing language.

Oregon

HB 2665: Despite an intense lobbying effort, Oregon became the fourth state to approve a nurse rate cap system, after Minnesota, Massachusetts, and Rhode Island. According to ASA's lobbyist, nurse staffing was one of the few remaining unregulated components of a very regulated health care system and legislators were determined that it needed to be regulated. ASA and Oregon ASA member firms will continue to be involved in helping to shape regulations implementing the new rate cap system as they are developed. The law is scheduled to go into effect Jan. 1, 2025.

Go the Law & Advocacy section of *americanstaffing.net* to see a list of pending legislation affecting the industry, the latest ASA issue papers, legal news alerts, and more. ■

Toby Malara, Esq., is vice president of government relations for ASA. Interested in receiving the weekly ASA Legislative Update? Email your request to asa@americanstaffing.net. Send feedback on this article to success@americanstaffing.net. Engage with ASA on social media—go to americanstaffing.net/social.



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