

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

- 1) Heading of the Part: Day and Temporary Labor Services Act
- 2) Code Citation: 56 Ill. Adm. Code 260
- 3)

<u>Section Numbers:</u>	<u>Emergency Actions:</u>
260.100	Amendment
260.200	Amendment
260.210	Amendment
260.220	New Section
260.230	New Section
260.400	Amendment
260.401	New Section
260.405	New Section
260.410	Amendment
260.420	Amendment
260.445	New Section
260.450	Amendment
260.470	Amendment
260.530	New Section
260.540	New Section
260.550	New Section
- 4) Statutory Authority: Implementing and authorized by the Day and Temporary Labor Services Act, as amended by House Bill 2862 of the 103rd General Assembly, effective August 4, 2023 [820 ILCS 175].
- 5) Effective Date of Emergency Rule:
- 6) If this emergency amendment is to expire before the end of the 150-day period, please specify the date on which it is to expire: This emergency amendment will expire at the end of the 150-day period, or upon adoption of permanent rules, whichever comes first.
- 7) Date Filed with the Index Department:
- 8) A copy of the adopted amendments including any material incorporated is on file in the Department of Labor's Springfield office and is available for public inspection.
- 9) Reason for Emergency:

Immediate Effective Date

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

House Bill 2862 of the 103rd General Assembly, amending the Day and Temporary Labor Services Act, took effect on August 4, 2023 upon the Governor's signature. Therefore, the Department must adopt emergency rulemaking in order to implement and clarify a number of key provisions meant to protect the health, safety, and general welfare of workers so that employers have the guidance necessary to comply with the Act, interested parties are aware of the procedure for initiating action under this Act, and the Department has the tools necessary to enforce the new provisions. The current state of the day and temporary labor industry – which is also the impetus behind the statutory changes – merits emergency rules to protect public safety and the public welfare.

Safety Hazard Assessment and Training Provisions

These rules allow IDOL to ensure that day and temporary labor agencies are providing adequate hazard and safety trainings to laborers, including those being sent to manufacturing locations. Increasingly, day and temporary laborers are subjected to unsafe working conditions, with dire consequences. On June 15, 2023, Federal OSHA issued a report finding that, in December 2022, a temporary worker at a frozen pizza manufacturing plant in Gurnee, Illinois, was killed while using machinery that she had not been properly trained to use (Federal OSHA Inspection #1640500.) Federal OSHA and the U.S. Department of Labor are also investigating the death of a 16-year-old child that occurred on July 14, 2023, while he was working as a temporary laborer at a poultry processing plant in Hattiesburg, Mississippi (Federal OSHA Inspection #1683342.015) . In response to injury and illness rates that are “significantly higher than for other establishments,” Federal OSHA recently announced a new National Emphasis Program to prevent workplace hazards in warehouses, processing facilities, distribution centers, and high-risk retail establishments.

Day and temporary laborers who have not been properly trained are particularly vulnerable to workplace injuries because they are unfamiliar with the work they are asked to do. Additionally, day and temporary laborers may be unaware of emergency protocols at a third party client worksite even though directly hired employees of the client have received that training. The December 10, 2021, Amazon warehouse collapse in Edwardsville caused by a tornado, in which six workers died, illustrates the importance of all workers in a facility being properly aware of emergency protocols.

Equal Pay After 90 Days/Disclosure of Placement Fee Provisions

Two new statutory provisions, guaranteeing equal pay and benefits for day and temporary laborers after 90 days of being assigned to a client of the day or temporary labor agency,

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

and requiring disclosure of “placement fees” to affected laborers, are meant to address instances of “perma-temping,” in which a day or temporary laborer is assigned to work for client on a long term placement and is effectively shut out of the opportunity for direct-hire employment with the client. A statutory provision guaranteeing equal pay for day and temporary laborers after 90 days of being assigned to a client of the day or temporary labor agency should not be delayed, because the provision will have an concrete direct impact on wages and benefits for low-wage, vulnerable workers. According to a recent Harvard Business Review article, minority and female contract workers in certain fields are doing the same work as directly employed workers but receiving less pay and benefits. This is a public welfare issue that justifies emergency rules because laborers should be allowed to enforce their rights after 90 days of the effective date of the statute and the Department needs to issue rulemaking the clarify the enforcement provisions. Additionally, day and temporary labor service agencies employing these laborers will be immediately subject to the statutory changes and exposed to potential liability for noncompliance. As such, these rules are necessary for such agencies to understand their obligations under the law. It is key to public welfare that employers and laborers are able to exercise their rights and responsibilities under these provisions.

Disclosure of “placement fees” to affected laborers is an important component of this emergency, as laborers may be unaware that such fees apply to their employment, even though those fees service to restrict the laborers’ economic freedom to seek a more desirable employment situation by becoming a direct-hire employee of a third party clients. The welfare of both the laborers and the third party clients is served by this emergency rulemaking to require some transparency around this practice.

Right to Refuse Assignment to Labor Dispute

Currently, the Act prohibits a day or temporary labor service agency from assigning a laborer to work at a work site that is the site of a labor dispute. This practice has been found by a court to be preempted by the National Labor Relations Act, so House Bill 2862 of the 103rd General Assembly modifies that statutory provision by instead saying that agencies must disclose the presence of a labor dispute to a laborer before assigning that worker to work there, and the laborer has the right to refuse that assignment without retaliation. At the time of this filing, there is a strike at Loretto Hospital in the Chicago’s West Side. Emergency rules are necessary so that temp workers are aware of ongoing labor disputes like the one with Loretto and can refuse assignment without retaliation. The immediate effective date of this Act, the judicial opinion on the matter, and the economic consequences to the laborer and the client constitute an emergency situation.

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

Ancillary Enforcement Power Provisions/Third Party Enforcement

These Rules implement statutory penalty increases and add factors for the assessment of penalties according to Department discretion, which are necessary components of the Department's ability to enforce the new statutory provisions. Additionally, these rules make corresponding updates to the recordkeeping requirements for day and temporary labor service agencies and third party clients.

In addition to Department administrative enforcement, the statutory provisions allow interested parties, such as labor unions and worker advocacy organizations, to immediately start enforcing the health and general welfare provisions of the Act on behalf of day and temporary laborers, and rules are necessary to outline that process.

Third Party Client Obligations

The statutory changes also necessitate additional involvement or input from clients to agencies in order for both parties to be in compliance with provisions of the Act. These emergency rules outline procedures for clients to comply, so that agencies have the information necessary to fulfill their obligations under the Act.

- 10) A Complete Description of the Subjects and Issues Involved: This rulemaking adds definition for new terms used throughout the Part, including "benefits," "hazard," "interested party," "labor dispute," "right to sue letter," and several terms necessary to assess equal work. This rulemaking outlines the process for an interested party to pursue a civil action to enforce the Act. This rulemaking codifies statutory penalties; and outlines provisions for day and temporary labor service agencies and third party clients to comply with equal pay, hazard awareness, safety training, and labor dispute provisions of the Act, including recordkeeping provisions. This rulemaking requires that a worker be notified if their employment is subject to a "placement fee" charged to a client by the agency if that client wishes to directly hire them and offers an example for how such placement fee may be calculated according to statutory requirements. This rulemaking implements a new statutory provision allowing a circuit court to revoke, suspend, or deny a day and temporary labor service agency's registration.
- 11) Are there any proposed rulemakings to this Part pending? No
- 12) Statement of Statewide Policy Objectives: The Day and Temporary Labor Services Act regulates the operation of day and temporary labor agencies and, to a lesser extent, their third party clients, in order to offer workplace protections for day and temporary workers who do not enjoy the benefits of direct employment.

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

- 13) Information and questions regarding this emergency rule shall be directed to:

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

Anna.Koepfel@illinois.gov
DOL.Rules@illinois.gov

The full text of the Emergency Amendments begins on the next page:

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY 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

SUBPART A: GENERAL PROVISIONS

Section
260.100 Definitions
EMERGENCY

SUBPART B: COMPLAINT AND INVESTIGATION

Section
260.200 Complaint
EMERGENCY
260.210 Investigation
EMERGENCY
260.220 Complaints by Interested Parties
EMERGENCY
260.230 Penalties
EMERGENCY

SUBPART C: REGISTRATION PROCESS

Section
260.300 Registration
260.310 Content of Application to Register
260.320 Expiration and Renewal of Registration
260.330 Registration Fees

SUBPART D: DUTIES AND RESPONSIBILITIES OF DAY AND
TEMPORARY LABOR SERVICE AGENCIES

260.400 Employment Notice
EMERGENCY
260.401 Right to Refuse Assignment Due to Labor Dispute
EMERGENCY

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

260.405 Training

EMERGENCY

260.410 Recordkeeping

EMERGENCY

260.420 Inspection and Maintenance of Records

EMERGENCY

260.430 Meals

260.440 Transportation

260.445 Equal Pay for Equal Work

EMERGENCY

260.450 Wage Payment and Notice

EMERGENCY

260.460 Deductions from Wages

260.470 Placement Fees

EMERGENCY

260.480 Public Access Area

260.490 Postings

260.495 Liability Insurance

260.497 Worker's Compensation Insurance

SUBPART E: DUTIES AND RESPONSIBILITIES OF THIRD PARTY CLIENTS

260.500 Wage Payments and Legal Responsibility

260.510 Verification of Registration

260.520 Work Verification Form

260.530 Safety Hazard Disclosure to Agency

EMERGENCY

260.540 Labor Dispute Disclosure to Agency

EMERGENCY

260.550 Recordkeeping Responsibilities for Third Party Clients

EMERGENCY

SUBPART F: SUSPENSION, REVOCATION,
DENIAL OF REGISTRATION, AND HEARINGS

Section

260.600 Suspension, Revocation, or Denial

260.610 Initiation of Hearing

260.620 Considerations in Reaching a Decision (Repealed)

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

AUTHORITY: Implementing and authorized by Section 45 of the Day and Temporary Labor Services Act [820 ILCS 175/45].

SOURCE: Adopted at 24 Ill. Reg. 6901, effective April 17, 2000; amended at 25 Ill. Reg. 856, effective January 5, 2001; amended at 30 Ill. Reg. 11557, effective June 22, 2006; amended at 32 Ill. Reg. 8736, effective May 29, 2008; emergency amendment at 47 Ill. Reg. _____, effective _____, for a maximum of 150 days.

SUBPART A: GENERAL PROVISIONS

Section 260.100 Definitions

EMERGENCY

"Act" means the Day and Temporary Labor Services Act [820 ILCS 175].

"Benefits" means health care, vision, dental, life insurance, retirement, leave (paid and unpaid), other similar employee benefits, and other employee benefits as required by State and federal law.

"Contract" means an agreement, written, oral or otherwise as agreed to between the parties.

"Day" means a calendar day.

"Day or Temporary Laborer" means *a natural person who contracts for employment with a day and temporary labor service agency.*

"Day and Temporary Labor" means *work performed by a day or temporary laborer at a third party client, the duration of which may be specific or undefined, pursuant to a contract or understanding between the day and temporary labor service agency and the third party client. "Day and temporary labor" does not include labor or employment of a professional or clerical nature.*

"Day and Temporary Labor Service Agency" means *any person or entity engaged in the business of employing day and temporary laborers to provide services, for a fee, to or for any third party client pursuant to a contract with the day and temporary labor service agency and the third party client, and which is located, operates, or transacts business within the State of Illinois. [820 ILCS 175/5]*

"Department" means the Illinois Department of Labor.

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

"Directly Hired Employee" means an individual who works directly for a third party client as an employee and does not contract for employment through a day and temporary labor service agency.

"Director" means the Director of Labor or a duly authorized representative.

"Effort" means the physical or mental exertion needed for the performance of a job. Job factors that cause mental fatigue and stress, as well as those factors that alleviate fatigue, are to be considered in determining the effort required for the job. Effort encompasses the total requirements of the job. Occasional or sporadic performance of an activity that may require extra physical or mental exertion is not alone sufficient to justify a finding of unequal or equal effort.

"Hazard" means any source of potential for damage, harm, or adverse health effect that, if left uncontrolled, could result in an injury or illness of a worker.

"Hours worked" has the meaning ascribed to that term in 56 Ill. Adm. Code 210.110. [820 ILCS 175/30(a)(2)]

"Interested Party" means an organization that monitors or is attentive to compliance with public or worker safety laws, wage and hour requirements, or other statutory requirements. [820 ILCS 175/5]

"Labor Dispute" means any controversy concerning wages, hours, terms or conditions of employment.

"Person" means *every natural person, firm, partnership, co-partnership, limited liability company, corporation, association, business trust, or other legal entity, or its legal representatives, agents, or assigns.*

"Placement Fee" means a fee that a third party client pays to a day or temporary labor service agency in order for the third party client to directly hire a day or temporary laborer as an employee of the third party client, also known as a "conversion fee".

"Professional" means, for purposes of the Day and Temporary Labor Services Act [820 ILCS 175], any person who meets the duties test of a professional under 29 CFR 541.3 as of March 30, 2003 (no later dates or editions). Specifically, this means any employee engaged in work predominantly intellectual and varied in character, rather than routine mental, manual, mechanical or physical work.

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

"Responsibility" means the degree of accountability required in the performance of a job. Minor or occasional responsibility added to an employee's duties that are not of significant consequence or importance will not justify a finding of unequal or equal responsibility.

"Retaliate" means to reprimand, discharge, suspend, demote, deny a work assignment, or change the terms or conditions of the laborer's assignment with a third party client because of the laborer's involvement in protected activities under the Act or this Part.

"Right to Sue Letter" means a letter notifying a party of its right to file an action in civil court under the Act.

"Seniority" means the number of days a directly hired employee has been working for the third party client.

"Similar Working Conditions" means the surroundings and hazards, including the frequency and intensity of such conditions. Surroundings measure the elements, such as toxic chemicals or fumes, regularly encountered by an employee. Hazards take into account the physical hazards regularly encountered by an employee. Slight or inconsequential differences in working conditions that are not usually taken into account by employers or in collective bargaining in setting wage rates do not justify a differential in pay. The method used for testing this requirement is flexible. The mere fact that jobs are in different departments of a workplace or performed in different locations will not necessarily mean that the jobs are performed under dissimilar working conditions.

"Skill" means experience, training, education and ability. Possession of a skill not needed to meet the requirements of the job cannot be considered in making a determination regarding equality of skill.

"Substantially Similar Work" means comparable work on jobs with comparable requirements. Substantially similar is not dependent on a job classification or title but depends rather on actual job requirements and genuine differences in how work is performed.

"Third Party Client" means any person that contracts with a day and temporary labor service agency for obtaining day or temporary laborers. [820 ILCS 175/5]

(Source: Emergency amendment at 47 Ill. Reg. _____, effective _____, for a maximum of 150 days)

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

SUBPART B: COMPLAINT AND INVESTIGATION

Section 260.200 Complaint

EMERGENCY

~~The Department may investigate any alleged violations of the Act or this Part.~~

- a) ~~A day or temporary laborer may file a complaint with the Department alleging a violation of the Act or this Part.~~
- b) ~~An interested party may file a complaint with the Department alleging a violation of the Act or this Part consistent with the procedures in Section 260.210 and Section 260.220.~~

(Source: Emergency amendment at 47 Ill. Reg. _____, effective _____, for a maximum of 150 days)

Section 260.210 Investigation

EMERGENCY

~~The Department may initiate an investigation upon receipt of a complaint under Section 260.200 or at the discretion of the Director.~~

- a) The investigation may be made by written or oral inquiry, field visit, conference, or any method or combination of methods deemed suitable in the discretion of the Department. The Director may examine a day and temporary labor agency's books and records, including electronic records, as well as any other documents reasonably related to the investigation, to determine whether a violation of the Act or this Part has occurred.
- b) The Director shall notify all parties of the results of the investigation and shall issue a violation notice when the investigation has established that a violation of the Act or this Part occurred or is occurring.
- c) If the Director issues a written decision, a party shall have the right to appeal a violation in accordance with the procedures set forth in Section 260.610 of this Part.

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

(Source: Emergency amendment at 47 Ill. Reg. _____, effective _____, for a maximum of 150 days)

Section 260.220 Complaints by Interested Parties
EMERGENCY

- a) Before an interested party may initiate a civil action in the county where an alleged violation of the Act occurred or where any party to the civil action resides, the interested party shall follow the procedural steps below:
- 1) The interested party shall file a complaint with the Department.
 - 2) The Department, in response to the complaint filed by the interested party, shall send a notice of complaint to the named parties indicating that the named party may contest or cure the allegations in the complaint within 30 days.
 - 3) If the named parties do not cure or respond to the notice within 30 days, then Department shall issue a Right to Sue letter to the interested party.
- b) In addition to subsection (a), the Department shall issue a Right to Sue letter if the Director determines:
- 1) The complaint or allegations are unjustified;
 - 2) The Department does not have jurisdiction;
 - 3) The Department will not exercise jurisdiction; or
 - 4) The administrative enforcement proceeding has concluded.
- c) An interested party may initiate a civil action 180 days after service of the notice of complaint to the parties if any of the following circumstances exist:
- 1) The contested complaint is not cured;
 - 2) The parties have not come to a mutual agreement to extend the time period to cure the complaint pursuant to subsection (d); or
 - 3) The Department has not issued a Right to Sue letter.

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

- d) The Parties may extend the 180-day waiting period by mutual agreement. However, the limitations period for the interested party to bring such an action shall be tolled for the 180-day waiting period and the for the time of any mutually agreed extensions of such time period.
- e) A complaint must be filed within three years after the alleged violations of the Act or this Part.

(Source: Emergency rule added at 47 Ill. Reg. _____, effective _____, for a maximum of 150 days)

Section 260.230 Penalties
EMERGENCY

- a) A day and temporary labor service agency or third party client found to have violated any provision of the Act or this Part is subject to a civil penalty of not less than \$100 and not more than \$18,000 for the first violation.
- b) Any subsequent violation is subject to a civil penalty of not less than \$250 and not more than \$7,500.
- c) The Department may issue a separate violation to an agency or third party client for each day or temporary laborer that is found to be affected by a violation of the Act.
- d) When determining the amount of a penalty, the Director shall consider the following factors:
 - 1) The seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation, including probability that death or serious physical or mental harm to a laborer will result or has resulted, the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated;
 - 2) The economic harm to the laborer caused by the violation;
 - 3) The history of previous violations;
 - 4) The amount necessary to deter a future violation;

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

- 5) Efforts by the day and temporary labor service agency or third party client to correct the violation; and
- 6) Any other matter that justice may require.

(Source: Emergency rule added at 47 Ill. Reg. _____, effective _____, for a maximum of 150 days)

SUBPART D: DUTIES AND RESPONSIBILITIES OF DAY AND
TEMPORARY LABOR SERVICE AGENCIES

Section 260.400 Employment Notice
EMERGENCY

- a) A day and temporary labor service agency shall provide at the time of dispatch, to each day and temporary laborer who is sent to work as a day and temporary laborer, a statement that contains the following information:
 - 1) *the name of the day or temporary laborer;*
 - 2) *the name and nature of the work to be performed;*
 - 3) *the wages offered;*
 - 4) *the name and address of the destination of each day or temporary laborer;*
 - 5) *the terms of transportation;*
 - 6) *whether a meal or equipment or both is provided by either the day and temporary labor service agency or the third party client and the cost of the meal and equipment, if any; ~~and~~ [820 ILCS 175/10(a)(1)-(6)]*
 - 7) if using codes on the day or temporary laborer's paycheck stub to identify third party clients, the code or codes that correlate to where the day or temporary laborer is being sent to work~~;~~
 - 8) information regarding safety hazards and concerns at the third party client company, identifying the representative of the client company to whom laborers should report safety concerns at the workplace to, and a statement

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

that safety hazards and concerns may be reported to the Department by calling the Department's Day and Temporary Labor Services Act toll-free hotline at 1-877-314-7052 or emailing DOL.DayLabor@illinois.gov; and

9) if a strike, lockout, or other labor dispute exists, then a written statement in the primary language of the day and temporary laborer notifying them of a strike, lockout, or other labor dispute and the laborer's right to refuse the assignment.

- b) The statement provided by the day and temporary labor service agency shall be certified and signed by an authorized agent of the agency stating that the information contained in the statement is true and correct. If a day or temporary laborer is not dispatched directly to the work site from the office or other location of the day and temporary labor service agency, the statement shall be provided to the day or temporary laborer by hand, email, facsimile or U.S. mail. If the day or temporary laborer is dispatched by telephone, the day and temporary labor service agency shall send the statement to the day or temporary laborer by hand, email, facsimile or U.S. mail. *If a day or temporary laborer is assigned to the same assignment for more than one day, the day and temporary labor service agency is only required to provide the employment notice on the first day of the assignment and on any day that any of the terms listed on the employment notice are changed* [820 ILCS 175/10(a)].

(Source: Emergency amendment at 47 Ill. Reg. _____, effective _____, for a maximum of 150 days)

Section 260.401 Right to Refuse Assignment Due to Labor Dispute
EMERGENCY

- a) A day and temporary labor service agency must inquire whether a strike, lockout, or other labor dispute exists at a third party client before sending a day or temporary laborer to work there.
- b) A day or temporary laborer shall have the right to refuse assignment to a place where a strike, lockout, other labor dispute exists without prejudice, and to receive another assignment.
- c) A day and temporary labor service agency shall not send a day or temporary laborer to a place where a strike, a lockout, or other labor dispute exists unless it has complied with Section 260.400(a)(9).

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

- d) If a day and temporary labor service agency fails to provide the information to the day or temporary laborer as required by Section 260.400(a)(9), then it shall constitute a notice violation subject to a private right of action under Section 95 of the Act.
- e) If a day or temporary laborer refuses assignment to location where a strike, lockout, or other labor dispute exists, then it shall be illegal for the day and temporary labor service agency or the third party client to retaliate against the day or temporary laborer under Section 90 of the Act.

(Source: Emergency rule added at 47 Ill. Reg. _____, effective _____, for a maximum of 150 days)

Section 260.405 Training
EMERGENCY

- a) On or before a day or temporary laborer's first day working at a client company each year, the day and temporary labor service agency shall provide general safety training to each day or temporary laborer for each client company that the day or temporary laborer is dispatched to.
- b) This training shall be provided at no expense to the day or temporary laborer, or the day or temporary laborer must be compensated for time spent in training.
- c) The training shall reflect all existing job hazards known to the client company or the agency, including hazards that have been reported to the client or the agency by a day or temporary laborer. This must include, but is not limited to, any of the following types of hazards which are present on the job site:
 - 1) hazards which necessitate the use of personal protective equipment;
 - 2) fall hazards;
 - 3) electrocution hazards;
 - 4) hazards of being struck by objects;
 - 5) getting caught or between hazards;

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

- 6) machinery-related hazards;
 - 7) chemical or other substance-related hazards;
 - 8) repetitive-motion hazards; and
 - 9) emergency action plans.
- d) The training shall include information regarding actions taken by the third party client to eliminate, control, or otherwise mitigate or protect workers from the hazards, as well as what steps workers should take to avoid or control the hazards. This must include emergency evacuation and shelter-in-place procedures.

(Source: Emergency rule added at 47 Ill. Reg. _____, effective _____, for a maximum of 150 days)

Section 260.410 Recordkeeping

EMERGENCY

Pursuant to Section 12 of the Act, day and temporary labor service agencies shall keep the following records during regular business hours at the place the records are kept:

- a) *the name, address and telephone number of each third party client, including each work site, to which day or temporary laborers were sent by the agency and the date of the transaction;*
- b) *the name and address, the specific location sent to work, the type of work performed, the number of hours worked, the hourly rate of pay and the date sent, for each day or temporary laborer;*
- c) *the name and title of the individual or individuals at each third party client's place of business responsible for the transaction;*
- d) *any specific qualifications or attributes of a day or temporary laborer requested by each third party client;*
- e) *copies of all contracts, if any, with the third party client and copies of all invoices for the third party client;*
- f) *copies of all employment notices provided in accordance with ~~Section 10~~ of the*

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

Act and this ~~Part~~Subpart;

- g) *deductions to be made from each day or temporary laborer's compensation made by either the third party client or by the day and temporary labor service agency for the day or temporary laborer's food, equipment, withheld income tax, withheld social security payments and every other deduction;*
- h) *verification of the actual cost of any equipment or meal charged to a day or temporary laborer; [820 ILCS 175/12]*
- i) the race and gender of each day or temporary laborer sent by the day and temporary labor service agency, as provided by the day or temporary laborer;
- j) number of hours billed by the day and temporary labor service agency to each third party client for each day or temporary laborer; ~~and~~
- k) a legend or explanation sheet for the code or codes used on a day or temporary laborer's paycheck stub that identifies the third party client or third party clients for whom the day or temporary laborer worked;:-
- l) all records pertaining to the safety hazard training and disclosure required by the Act, including documentation signed by each day or temporary laborer indicating that the day or temporary laborer has received the training required by the Act, including dates, and any reports of hazards received from day or temporary laborers;
- m) all records, including information provided by third party clients, used to determine compensation and benefits; and
- n) records related to any notice of a labor dispute provided to a day and temporary labor service agency, and documentation signed by each day or temporary laborer who is assigned to the site of a labor dispute acknowledging that the day or temporary laborer was informed about the dispute and their right to refuse the assignment.

(Source: Emergency amendment at 47 Ill. Reg. _____, effective _____, for a maximum of 150 days)

Section 260.420 Inspection and Maintenance of Records
EMERGENCY

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

- a) The Department is authorized to inspect and copy any records or notices required to be kept under the Act and this Part during regular business hours at the place where the records are maintained. The records or notices required to be kept under the Act and this Part shall be kept within the State of Illinois at an office of the day and temporary labor service agency. The refusal of an agency to produce for inspection or copying of the records will be considered grounds to revoke the agency's registration.
- b) Records required under this Section shall be maintained for a period of three years from their creation. However, records shall be maintained for a longer period while there is an open case pending against the agency.
- c) Day and temporary labor service agencies shall make the records described in Section 260.410, ~~except for subsections (e) and (m), (a), (b), (c), (f), (g), and (h) of this Part~~ available to a day or temporary laborer during normal business hours within ~~five~~ days following a written request. In addition, during normal business hours and within ~~five~~ days following a written request, day and temporary labor service agencies shall make available to the individual making the request records relating to the number of hours billed to a third party client for that individual day or temporary laborer's hours of work.

(Source: Emergency amendment at 47 Ill. Reg. _____, effective _____, for a maximum of 150 days)

Section 260.445 Equal Pay for Equal Work
EMERGENCY

- a) If a day or temporary laborer is assigned to work for a third party client, then the day or temporary laborer shall be paid at the same, or greater, rate of pay and receive the equivalent benefits as a directly hired employee of the third party client, under the following conditions:
 - 1) After August 4, 2023, the effective date of House Bill 2862 of the 103rd General Assembly, the day or temporary laborer is assigned to work for the third party client for more than 90 calendar days within any 12-month period, whether consecutively or intermittently; and
 - 2) The rate of pay and equivalent benefits shall be the same, or greater, than the lowest paid directly hired employee with the same level of seniority at

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

the third party client and performing the same or substantially similar work on jobs, the performance of which requires substantially similar skill, effort, and responsibility, and which are performed under similar working conditions.

- b) If there is not a comparative directly hired employee of the third party client, the day or temporary laborer shall be paid not less than the rate of pay and equivalent benefits of the lowest paid directly hired employee of the third party client with the closest level of seniority at the third party client.
- c) A day and temporary labor service agency may pay the hourly cash equivalent of the actual cost benefits in lieu of benefits required under this Section unless prohibited by State or federal law.
- d) If a day or temporary laborer's compensation rate must be increased due to the requirements of this Section, that compensation increase shall be effective as of the day or temporary laborer's 91st day of performing work for the third party client.
- e) A day or temporary laborer may file a complaint with the Department, consistent with procedures outlined in Section 260.210, if a day and temporary labor agency or third party client violates this Part or Section 42 of the Act.

(Source: Emergency rule added at 47 Ill. Reg. _____, effective _____, for a maximum of 150 days)

Section 260.450 Wage Payment and Notice

EMERGENCY

- a) At the time of payment of wages, a day and temporary labor service agency shall provide the following information on the day or temporary laborer's paycheck or on a form approved by the Department:
 - 1) *the name, address, and telephone number of each third party client at which the day and temporary laborer worked;*
 - 2) *the number of hours worked by the day or temporary laborer at each third party client each day during the pay period. If the day or temporary laborer is assigned to work at the same work site of the same third party client for multiple days in the same work week, the day and temporary*

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

laborer service agency may record a summary of hours worked at that third party client's worksite so long as the first and last day of that work week are identified as well;

- 3) *the rate of payment for each hour worked, including any premium rate or bonus;*
 - 4) *the total pay period earnings;*
 - 5) *all deductions made from the day or temporary laborer's compensation made either by the third party client or by the day and temporary labor service agency, and the purpose for which deductions were made, including the day and temporary laborer's food, equipment, withheld income tax, withheld social security payments, and every other deduction [820 ILCS 175/30(a)]; ~~and~~*
 - 6) *if using codes on the day or temporary laborer's paycheck stub to identify third party clients, the legend or explanation sheet for the code or codes that correlate to where the day or temporary laborer worked shall be made immediately available to the day or temporary laborer upon request and during normal business hours; ~~and~~-*
 - 7) *the calculation of the placement fee that could be charged in order for the third party client to hire the day or temporary laborer, if the agency charges such a placement fee, as provided for in Section 260.470, and the number of work days remaining before the agency cannot charge any client a placement fee to hire that day or temporary laborer.*
- b) *A day or temporary laborer who is contracted by a day and temporary labor service agency to work at a third party client's work site, but is not utilized by the third party client, shall be paid by the day and temporary labor service agency for a minimum of 4 hours of pay at the agreed upon rate of pay. 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, in addition to all hours worked by the day or temporary laborer during that shift. [820 ILCS 175/30]*
 - c) All wage payments must be in compliance with all laws relating to wages contained in 820 ILCS.

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

(Source: Emergency amendment at 47 Ill. Reg. _____, effective _____, for a maximum of 150 days)

Section 260.470 Placement Fees

EMERGENCY

- a) A day and temporary labor service agency may charge a placement fee to a third party client who employs a day and temporary laborer for whom a contract for work was effected by the agency. The fee shall not exceed the total daily commission rate the agency would have received over a 60 day period reduced by the total amount of the daily commission rate the agency has received each day the day or temporary laborer has performed work for the agency in the preceding 12 months.
- b) 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 that Client a \$50 commission per day on top of the worker's compensation. Between February 1 and April 1, 2024, Worker A works 25 days for Client B and 15 days 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 according to the following calculation:

\$50 daily commission rate multiplied by 60 = \$3,000.

\$50 daily commission rate multiplied by 40 days of work = \$2,000.

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

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

(Source: Emergency amendment at 47 Ill. Reg. _____, effective _____, for a maximum of 150 days)

SUBPART E: DUTIES AND RESPONSIBILITIES OF THIRD PARTY CLIENTS

Section 260.530 Safety Hazard Disclosure to Agency
EMERGENCY

- a) *Prior to a day and temporary labor service agency assigning or dispatching a day or temporary laborer to a worksite, the third-party company must notify the agency of all of the client's safety and health practices and disclose all known hazards at the actual location where the day or temporary laborer will be working in order for the day and temporary labor service agency to assess the safety conditions, worker's tasks, and the company's safety program; [820 ILCS 175/85]*
- b) *If the day and temporary labor service agency becomes aware of an additional safety or health practice, or hazard at the actual worksite, then the agency shall notify the third-party company as soon as possible.*
- c) *No day or temporary laborer shall be asked to work at a worksite with a job hazard known by the day and temporary labor service agency unless the job hazard has been fixed or addressed by the third party client prior to assignment.*

(Source: Emergency rule added at 47 Ill. Reg. _____, effective _____, for a maximum of 150 days)

Section 260.540 Labor Dispute Disclosure to Agency
EMERGENCY

A third party client must notify a day and temporary labor service agency if a strike, lockout, or other labor dispute exists at the location where the agency is dispatching day or temporary laborers.

(Source: Emergency rule added at 47 Ill. Reg. _____, effective _____, for a maximum of 150 days)

Section 260.550 Recordkeeping Responsibilities for Third Party Clients
EMERGENCY

ILLINOIS REGISTER

DEPARTMENT OF LABOR

NOTICE OF EMERGENCY AMENDMENTS

Pursuant to the Act, third party clients shall keep the following records available for inspection by the Department during regular business hours at every location where day or temporary laborers are sent to work:

- a) all records related to all known safety hazards, including documentation of steps taken to mitigate or control the hazards; and
- b) records relating to compensation of directly hired employees for comparison purposes necessary for compliance with Sections 260.445 and 260.505.

(Source: Emergency rule added at 47 Ill. Reg. _____, effective _____, for a maximum of 150 days)