

NJ Temporary Workers Bill of Rights Upheld in 3rd Circuit

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In 2023, [we reported on the enactment](#) of the Temporary Workers' Bill of Rights (the "Act") and [subsequent regulations](#) by the New Jersey Department of Labor ("DOL"). Recent litigation filed by the New Jersey Staffing Alliance, the American Staffing Association, and the New Jersey Business and Industry Association (the "Agencies") against the acting director of the New Jersey Division of Consumer Affairs in the Department of Law and Public Safety, Cari Fais, and other state defendants (the "State") in New Jersey Federal Court has provided clarification and confirmation of the protections provided and requirements set forth in the Act. *N.J. Staffing All. v. Fais*, 2024 U.S. App. LEXIS 18168, *1 (3d Cir. July 24, 2024).

On July 24, 2024, the Third Circuit heard an appeal of the District Court of New Jersey's denial of the Agencies' motion for a preliminary injunction to challenge Section 7(b) of the Act as violative of the Dormant Commerce Clause. *N.J. Staffing All.*, 2024 U.S. App. LEXIS 18168 at *2. Specifically, Section 7(b) requires staffing firms to pay temporary workers the same average rate of pay and average cost of benefits as a permanent employee performing similar work at the client company. N.J. Stat. Ann. §34:8D-7(b). To comply with this section, the staffing agency must also obtain the client company's pay and benefits data. *Ibid.* The District Court denied the Agencies' motion, finding that they were unlikely to succeed on the merits of their claim. *N.J. Staffing All. v. Fais*, 2023 U.S. Dist. LEXIS 129331, *39 (D.N.J. July 26, 2023).

On appeal, the Agencies contended that the increased labor costs from the Act make New Jersey's staffing firms less competitive and therefore Section 7(b) is an impermissible price-setting measure in violation of the Dormant Commerce Clause. *N.J. Staffing All.*, 2024 U.S. App. LEXIS 18168 at *4-5. The Agencies further argued that the Act is void due to vagueness in that it does not define "benefits" or "same or substantially similar work." *Ibid.* The Agencies attempted to argue that Section 7(b)'s requirement was akin to other Dormant Commerce Clause cases wherein it was found that the challenged legislation impermissibly discriminated against out-of-state business by, for example, imposing heightened tariffs on out-of-state businesses. *Id.* at *7. The Third Circuit was not persuaded by this argument, finding that the Act does not show any preference for in-state businesses, but rather, imposes uniform wage restrictions on all firms doing business in New Jersey. *Id.* at *8. Further, the Court highlighted that the Act does not impose a tariff on work sent out of state because the cost will vary based on the individual customer regardless of their location. *Ibid.* Therefore, as the Court found that the Act imposed uniform wage requirements on the industry regardless of location, there was no "price-setting measure" in violation of the Dormant Commerce Clause. *Id.* at *10.

As to the claim that the Act was void for being unconstitutionally vague, the Third Circuit agreed with the District Court that the Act provided "fair notice" of the law's requirements and as such was not vague. *N.J. Staffing All.*, 2024 U.S. App. LEXIS 18168 at *10. Specifically, the Court noted the language of the Act regarding "substantially similar work" resembles that of the New

Jersey Equal Pay Act. *Id.* at *11. Citing similar challenges of the wording of the Equal Pay Act, the Court held that although the definitions “contain some ambiguities,” the wording is not “so vague as to be considered no rule or standard at all.” *Id.* at *11-12 With regard to “benefits,” the Court found that “businesspeople of ordinary intelligence in the [Agencies’] position... would be able to know what” the word means “as a matter of ordinary commercial knowledge.” *Id.* at *12-13. The Court supported this holding with statements from the Agencies’ own brief on appeal in which they demonstrated, at a minimum, a general understanding of what “benefits” meant. *Ibid.* As such the Court denied the Agencies’ claim that the Act was vague.

This case signals the strength of the Act in the face of constitutional challenges related to its various requirements. Indeed, in speaking to the Legislative intent behind the Act, the Court noted that the “legislative winners” were New Jersey’s Temporary Workers, and “the losers” are New Jersey staffing firms. *N.J. Staffing All.*, 2024 U.S. App. LEXIS 18168 at *10. It therefore appears that any future constitutional challenge to the Act will be faced with the difficult task of opposing the strong legislative intent behind protecting temporary workers’ rights.