CLIENT ALERT: New Law for Massachusetts Temporary Employment Agencies

NEW "TEMPORARY WORKERS RIGHT TO KNOW LAW" IMPOSES SUBSTANTIAL NEW REGULATORY NOTICE OBLIGATIONS ON MASSASCHUSETTS TEMP FIRMS

Massachusetts has enacted new legislation requiring temporary staffing firms to provide comprehensive, individualized pre-employment notices to employees regarding each new work assignment. Firms also are required to reimburse employees if they are sent to a worksite where no work is available. The new mandate obligates staffing firms to provide written notices that include the following information:

- the name, address and telephone number of the temp agency, or the contact information of the agent "facilitating" the work placement
- the name of the workers' compensation carrier
- the identity of worksite employer, and the relevant department
- a description of the position and whether special clothing, equipment, training, or licenses are required
- the designated pay day, the hourly rate of pay and whether overtime pay "may occur"
- the daily starting time and anticipated end time and the expected duration of employment
- whether meals are provided and whether they will be paid for by the firm
- details concerning the "means of transportation" to the worksite and any fees

The statute also requires notice of expected costs to be charged for supplies or training; however, another section the statute apparently prohibits most such charges. Staffing agencies also face significant restrictions on allowable employee pay deductions, and they must comply with new job advertising regulations. New postings of legal notices are also required at all staffing firm sites under the new regulations.

The law includes several perplexing provisions, which could be clarified by future state regulations. These include a broad definition of the term "staffing agency" which is defined as any "individual, company, corporation or partnership that procures or provides temporary or part-time employment to a person who then works under the supervision or direction of a work site employer." The legislation also amends a little known and ambiguous law that caps the amount of transportation fees that lawfully may be charged to temporary workers.

A narrow class of white collar employees is exempt from the law, including secretaries or administrative assistants. The statute also exempts from coverage professional employees who are engaged in work "predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; involving the consistent exercise of discretion and judgment in

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its performance; of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and requiring knowledge of an advanced type."

The law contains harsh potential legal sanctions, including criminal penalties of up to two years in jail, and fines of up to $50,000. In addition, employers are subject to Attorney General imposed civil citations with penalties of up to $25,000 per violation. The law, Mass. Gen. L. c. 149, § 159C, becomes effective as of November 5, 2012.

For more information about preparing required notice and other compliance issues associated with temporary workers, please contact Morgan, Brown & Joy, and LLP

Daniel Field is an attorney with Morgan, Brown & Joy, LLP and may be reached at (617)788-5016 or at dfield@morganbrown.com. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.

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