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The National Federation of Independent Business, representing over 12,000 small and independent employers in Illinois offer the enclosed Comments on the Emergency Rules filed on August, 4, 2023 amending, in part 56 Ill Adm. Code 260 implementing enacted changes to the Day and Temporary Labor Services Act. HB 2862 of the 103rd General Assembly was approved and enacted on the same day with an immediate effective date.

NFIB commends the Department for filing emergency rules upon the enactment of P.A. 103-0437 in an effort to provide both staffing agencies and private employers with guidance on enforcement and compliance. The Act, itself, is extremely confusing and lacking in clarity and will be extraordinarily difficult to implement. Therefore, the employer community is thankful for the Department's efforts in attempting to provide direction.

However, these published Rules fall short of providing clarity and complicate difficulties faced by employers by the Act, as they are in some cases, inconsistent with the Act and implement policies outside the scope of the enacted legislation.

The Department, in its Notice of Emergency Amendments references two specific provisions of the Act; one that guarantees equal pay and benefits after 90 days of assignment, and a requirement of disclosure of "placement fees" to affected laborers that are both meant to address instances of "perma-placing". The Rules then specifically reference in Section 260.450 "Wage Payment and Notice", that the staffing agency shall provide:

(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 by 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".

While this disclosure was contemplated by previous versions of this legislation, it was highly opposed by the employer community, and ultimately was not included in HB 2862 as

enacted in P.A. 103-0437. The Department has chosen to unilaterally include this policy in these Rulemakings despite its absence from the enacted legislation. The Act does not provide for disclosure of these proprietary fees, and therefore, this mandate should not be included in the Rulemaking.

NFIB condones the Department for including a definition of "Benefits" in the Rulemaking in an effort to provide direction and clarity, as the Act focuses on a burdensome "equivalent pay and benefits" mandate after 90 days of placement.

Any pay and benefits equivalency standard is going to be extremely difficult to define and implement, as many staffing agencies provide workers with health insurance and paid leave benefits. Often times, these benefits are willingly waived by workers, for various personal reasons. NFIB contends that the offering of health, retirement, and leave benefits should suffice this equivalency requirement, even if the worker willingly waives the benefits.

NFIB asserts that the safety training requirements mandated by the law, and the definition of "Hazard" in the Rulemaking need to be restricted to facility, location, and vicinity of where the work will be performed by the temporary worker.

NFIB asserts that the definition of "Labor Dispute" provided in the Rulemaking is too broad and should be limited to actual existence of a strike, lockout, expired collective bargaining agreement, or ongoing efforts for union certification.

NFIB appreciates the inclusion of "flexibility" in the definition of "similar working conditions", as a wide range of factors must be considered. However, we strongly assert that location can be a de facto delineating factor.

In Section 206.400 Employment Notice

Paragraph (8) outlines requirements that the Staffing Agency disclose "information regarding safety hazards and concerns at the third party client company". NFIB asserts that this information and training be specific to the site and location, and vicinity where the work will be performed and specific to the hazards associated with that work. The vast majority of Staffing Agencies tour and assess safety hazards and working conditions prior to sending a worker to an assignment and it is already encouraged as a best practice.

Also in this Section, in Paragraph (9), the Rules mandate that a written statement be provided "in the primary language of the day and temporary laborer". However, this is inconsistent with and more stringent than the requirement under the Act, which mandates that the written statement be provided "in a language that the day and temporary laborer understands".

Section 260.410 – Recordkeeping – Emergency and Proposed Rule

NFIB contends that paragraph (m) requiring "the storage of all records, including information provided by third party clients, used to determine compensation and benefits" should be limited to this information being provided and maintained when the equal pay and benefits requirements are in effect, after the 90 days of employment. This proprietary information does not need to be shared, disclosed, or maintained prior to the need to comply with the equal pay mandate.

We believe language should be added to this section as follows: "m) all records, including information provided by third party clients, used to determine compensation and benefits to comply with Section 260.445 – Equal Pay for Equal Work of these rules;"

Thank you for your attention to these concerns. NFIB stands prepared to work with the Department, the Legislature, and any interested parties to resolve these concerns to provide a landscape that protects workers and maintains a healthy and robust temporary worker economy to fulfill the needs of business owners in Illinois. Business owners deserve clarity in implementation of new regulations that enables them to faithfully and easily comply. It is clear that the flaws with this legislation frustrate that need.

Respectfully submitted,

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