

Filed July 21, 2023

LABOR AND WORKFORCE DEVELOPMENT

DIVISION OF WAGE AND HOUR COMPLIANCE

Temporary Laborers

New Rules: N.J.A.C. 12:72

Authorized By: _____

Robert Asaro-Angelo, Commissioner

Department of Labor and Workforce Development

Authority: N.J.S.A. 34:1-20; 34:1A-3(e); 34:8D-5(i); and 34:8D-10(c).

Calendar Reference: See Summary below for explanation of exception to the calendar requirement.

Proposal Number: PRN 2023 - _____

Submit written comments by _____ to:

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The agency proposal follows:

Summary

The Department is proposing new rules at N.J.A.C. 12:72, in order to implement Sections 1 through 7, and Section 10, of P.L. 2023, c. 10 (N.J.S.A. 34:8D-1 et seq.).

commonly referred to as the Temporary Workers' Bill of Rights. The above cited sections of the Temporary Workers' Bill of Rights are enforced by the Department of Labor and Workforce Development and will be referred to hereafter as "the Act." The Division of Consumer Affairs, within the Department of Law and Public Safety, which is responsible for enforcing other sections of the Temporary Workers' Bill of Rights, will be promulgating its own rules to implement those sections of the law.

The Act applies to temporary help service firms, third-party clients of temporary help service firms, and temporary laborers employed by temporary help service firms who are assigned to designated classification placements with third-party clients. Specifically, the Act imposes requirements and restrictions on temporary help service firms relative to the temporary laborers who they employ. These requirements and restrictions fall into the following categories:

- (1) **Notifications**, including an assignment notification delivered to the temporary laborer at the time of dispatch; a notice of change on a multi-day assignment in the schedule, shift or location; notice of a strike, lockout, or other labor dispute and the right to refuse an assignment where such a strike, lockout or other labor dispute exists; and a confirmation of having sought work;
- (2) Rights and restrictions relative to the providing of **transportation** to temporary laborers, including a prohibition against requiring a temporary laborer to use transportation provided by the temporary help service firm or by another provider of transportation services; a prohibition against a temporary laborer being charged a fee by the temporary help service firm or a third-party client, or a contractor or agent of either, for transportation to or from the worksite; certain

restrictions regarding the referral of temporary laborers to any person for transportation to or from a worksite; certain requirements pertaining to the safety of motor vehicles used to transport temporary laborers to or from a worksite; and a requirement that, unless the temporary laborer requests otherwise, when the temporary laborer has been transported to a worksite, the temporary help service firm or third-party client, or contractor or agent of either, must provide transportation of the temporary laborer back to the point of hire at the end of the day;

(3) Prohibitions pertaining to **post employment restrictions**, including a cap on the **placement fee** that a temporary help service firm may charge a third-party client when the third-party client employs a temporary laborer who had been assigned by the temporary help service firm to perform work for the third-party client;

(4) A **pay equity** requirement, whereby temporary help service firms must provide each temporary laborer with pay and benefits equal to or greater than the average rate of pay and average cost of benefits for employees of the third-party client to which the temporary laborer is assigned, who are performing the same or substantially similar work to that of the temporary laborer at the time the temporary laborer is assigned to the third-party client, on a job the performance of which requires equal skill, effort, and responsibility to that of the temporary laborer, and which is performed under similar working conditions;

(5) Various restrictions relating to **charges and payroll deductions** for such things as unreturned reusable equipment; additional equipment, clothing,

accessories, or other items which are not required by the nature of the work, that are made available for purchase; meals; consumer reports, criminal background checks and drug tests;

(6) Other requirements, including providing to temporary laborers a **detailed itemized statement** at the time of payment and an **annual earnings summary** for the prior calendar year no later than February 1 of the current calendar year; the **holding of daily wages in favor of bi-weekly payments** at the request of a temporary laborer; various requirements regarding **time and mode of payment**; and the making of **non-utilization payments** to temporary laborers when they are contracted to work and are not utilized or when their worksite is changed.

The Act also contains recordkeeping requirements for both temporary help service firms and third-party clients, as well as a prohibition against retaliation through discharge or in any other manner by a temporary help service firm or third-party client, or an agent of either, against a temporary laborer for exercising any rights granted the temporary laborer under the Act.

Finally, the Act contains a requirement that a third-party client must reimburse a temporary help service firm the wages and related payroll taxes for services performed for the third-party client by a temporary laborer, according to payment terms outlined in invoices, service agreements, or stated terms provided by the temporary help service firm. The Act states that when a third-party client has failed to make the required wage or related payroll tax payments to the temporary help service firm, the temporary help service firm may file a complaint with the Commissioner.

To implement the Act, the Department is proposing new rules at N.J.A.C. 12:72, which would include the following subchapters:

Proposed new N.J.A.C. 12:72-1 would contain general provisions, including the purpose and scope of the chapter and sections that address violations, administrative penalties, hearings, the Act's prohibition against retaliation, and the process for filing a complaint alleging a violation of either the Act or this chapter with the Division of Wage and Hour Compliance within the Department of Labor and Workforce Development.

Proposed new N.J.A.C. 12:72-2 would define the words and terms used throughout the chapter.

Proposed new N.J.A.C. 12:72-3 would address the notification requirements of the Act, delineating what must be contained in the assignment notification statement at the time of dispatch, indicating where on the Department's website the assignment notification statement form may be found, describing the manner in which the assignment notification statement must be provided to temporary laborers; describing the notice of change for multi-day assignments; setting forth the requirement that temporary laborers receive notice when a strike, lockout or other labor dispute exists and that they have a right to refuse the assignment; setting forth the requirement that a temporary laborer who is not placed with a third-party client or otherwise contracted to work must, upon the temporary laborer's request, be provided with written confirmation that the temporary laborer sought work on that day; and, finally, addressing the statutory requirement that all notifications be made available to temporary laborers in Spanish or in any other language that is generally understood in the locale of the temporary help service firm.

Proposed new N.J.A.C. 12:72-4 would describe the recordkeeping requirements under the Act both for temporary help service firms and their third-party clients. The new subchapter would also describe which records must be made available for inspection by the Commissioner and when those records must be made available for inspection by the Commissioner, as well as which records must be made available for copying at no cost to temporary laborers or their authorized representatives and when those records must be made available for copying at no cost to temporary laborers or their authorized representatives.

Proposed new N.J.A.C. 12:72-5 would set forth the Act's requirements and restrictions regarding transportation of temporary laborers to and from the worksite, including the prohibition against requiring a temporary laborer to use transportation provided by the temporary help service firm or by another provider of transportation services; the prohibition against a temporary laborer being charged a fee by the temporary help service firm or a third-party client, or a contractor or agent of either, for transportation to or from the worksite; the Act's restrictions regarding the referral of temporary laborers to any person for transportation to or from a worksite; the Act's requirements pertaining to the safety of motor vehicles used to transport temporary laborers to or from a worksite; and the requirement that, unless the temporary laborer requests otherwise, when the temporary laborer has been transported to a worksite, the temporary help service firm or third-party client, or contractor or agent of either, must provide transportation of the temporary laborer back to the point of hire at the end of the day.

Proposed new N.J.A.C. 12:72-6 would address the Act's provisions regarding post-employment restrictions and its cap on the charging by temporary help service firms to its third-party clients of a placement fee when the third-party client employs a temporary laborer who had been assigned by the temporary help service firm to perform work for the third-party client.

Proposed new N.J.A.C. 12:72-7 would contain the Act's pay equity requirement, whereby a temporary help service firm is required to provide temporary laborers with pay and benefits that are equal to or greater than the average rate of pay and average cost of benefits of comparator employees of the third-party client; it would describe in detail the method for calculating the hourly rate of pay that the temporary help service firm must pay the temporary laborer based on the average rate of pay and average cost of benefits provided to the third-party client's comparator employees; and it would delineate how to determine whether a temporary laborer and third-party client employee are performing substantially similar work.

Proposed new N.J.A.C. 12:72-8 would describe the Act's restrictions relating to charges and payroll deductions for such things as unreturned reusable equipment; additional equipment, clothing, accessories, or other items which are not required by the nature of the work, that are made available for purchase; meals; consumer reports, criminal background checks and drug tests.

Proposed new N.J.A.C. 12:72-9 would address other of the Act's temporary help service firm responsibilities, third-party client responsibilities, and temporary laborer protections, such as the requirement that temporary laborers be provided a detailed itemized statement at the time of payment as well as an annual earnings summary for

the prior calendar year no later than February 1 of the current calendar year; that temporary laborers must be given the option of having the temporary help service firm hold their daily wages in favor of bi-weekly payments; that temporary help service firms must adhere to all of the requirements of N.J.A.C. 12:55-2.4 regarding time and mode of payments; and that temporary help service firms make non-utilization payments to temporary laborers when they are contracted to perform work for a third-party client, but are not utilized, or are sent to a different worksite.

Proposed new N.J.A.C. 12:72-10 would address both the Act's requirement that a third-party client reimburse the temporary help service firm wages and related payroll taxes for services performed for the third-party client by a temporary laborer, and the Act's requirement that the Commissioner be available to receive complaints by temporary help service firms to which third-party clients have not made such reimbursements. The Act does not authorize the Commissioner to issue an administrative penalty or take any remedial action against a third-party client for failure of the third-party client to pay wages or payroll taxes to the temporary help service firm. Consequently, proposed new N.J.A.C. 12:72-10 would provide temporary help service firms the option to file a complaint with the Commissioner against the third-party client as required by the Act, and would empower the Commissioner to issue a determination based on that complaint. However, for temporary help service firms that seek a remedy against the third-party client, the proposed rule would direct those aggrieved temporary help service firms to file an action with a court of competent jurisdiction.

As the Department has provided a 60-day comment period for this notice of proposal, the notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The vast majority of the proposed new rules either mirror the Act or are necessitated by the Act. Therefore, whatever positive or negative social impact might be felt would derive in the first instance from the Act and not the proposed new rules. As to the remainder of the new rules, it is the Department's belief that they would have a positive social impact, in that they would minimize any possible confusion as to who is covered by the Act, what activities are prohibited and what sanctions may be imposed under the Act. The proposed new rules would also provide detailed guidance to the regulated community as to how to comply with the Act. For example, regarding the Act's imposition of a cap on the placement fee that may be charged by a temporary help service firm to a third-party client when the third-party client employs a temporary laborer who had been assigned by the temporary help service firm to perform work for the third-party client, the Department has, within proposed new N.J.A.C. 12:72-6.2(c), provided **step-by-step** instructions as to how a temporary help service firm should calculate the maximum placement fee. Similarly, regarding the Act's pay equity requirement, whereby a temporary help service firm is required to provide the temporary laborer with pay and benefits that are equal to or greater than the average rate of pay and average cost of benefits being provided by the third-party client to employees who are performing the same or substantially similar work to that of the temporary laborer, the Department has, within proposed new N.J.A.C. 12:72-7.3, provided important

guidance regarding how one would determine whether a temporary laborer and an employee of a third-party client are performing substantially similar work. Within proposed new N.J.A.C. 12:72-7.2, the Department has also provided **step-by-step** instructions as to how a temporary help service firm would calculate the hourly rate of pay that the temporary help service firm must pay the temporary laborer based on the average rate of pay and average cost of benefits of comparator employees of the third-party client.

Furthermore, the proposed new rules would have a positive social impact in that they would establish a process for the assessment of penalties and the hearing of appeals, thereby enabling the Department to effectively enforce the law. Finally, the proposed new rules would have an overall positive social impact in that they would provide a regulatory framework for the Department's administration of an Act that has as its purpose the protection of a class of workers; specifically, temporary laborers. In that the Act's provisions will provide temporary laborers and their families with a greater degree of economic security and peace of mind, the proposed new rules would have the same positive social impact.

Economic Impact

As indicated in the Social Impact statement above, the vast majority of the proposed new rules either mirror the Act or are necessitated by the Act. Therefore, whatever positive or negative economic impact might be felt, including by temporary laborers, temporary help service firms and third-party clients of temporary help service firms, would derive in the first instance from the Act, not the proposed new rules. That portion of the new rules which addresses the levying of penalties by the Department

against those who violate the Act would, of course, have a negative economic impact upon those temporary help service firms and third-party clients who run afoul of the Act. As to the remainder of the new rules, it is the Department's belief that they would have a positive economic impact in that they would minimize any possible confusion as to who is covered by the Act, what conduct is prohibited under the Act, and how temporary help service firms and third-party clients may comply with the Act, among other important issues. It is the Department's hope that minimizing confusion as to these issues will avoid costs for those impacted by the Act of unnecessary litigation, which might otherwise result.

Federal Standards Statement

The proposed new rules do not exceed standards or requirements imposed by Federal law as there are currently no Federal standards or requirements applicable to the subject matter of this rulemaking. As a result, a Federal standards analysis is not required.

Jobs Impact

To the extent that the protections afforded to temporary laborers under the Act and the proposed new rules might result in third-party clients of temporary help service firms determining that it would be more advantageous for them to hire permanent employees than to continue using temporary labor, the Department does anticipate that the Act and the proposed new rules may result in the generation of permanent jobs.

Agriculture Industry Impact

The Department does not anticipate that the proposed new rules would have any impact on the agriculture industry in that the impact of the proposed new rules should be limited to those occupational groupings, and related industries, that are listed in the

statutory definition for the term “temporary laborer.” That definition includes a listing of occupational groupings, and corresponding United States Department of Labor, Bureau of Labor Statistics (BLS) codes, for food preparation and serving related occupations; building and grounds cleaning and maintenance; personal care and service occupations; construction laborers; helpers, construction trades; installation, maintenance, and repair occupations; production occupations; transportation and material moving occupations; and other protective service workers. It does **not** include 45-0000 Farming, Fishing, and Forestry, which encompasses the following: first-line supervisors of farming, fishing, and forestry workers; agricultural inspectors; animal breeders; graders and sorters, agricultural products; agricultural workers, all other; agricultural equipment operators; farm workers, farm, ranch and aquacultural animals; farmworkers and laborers, crop, nursery, and greenhouse; forest and conservation workers; logging workers, all other; log graders and scalers; fallers; and logging equipment operators. Thus, again, the proposed new rules should have no impact on the agriculture industry.

Regulatory Flexibility Analysis

It is not possible at this time to estimate how many businesses with fewer than 100 full-time employees may be impacted by the Act and these rules. This is because the term “designated classification placement,” defined within the Act to mean an assignment of a temporary laborer by a temporary help service firm to perform work in a particular set of occupational categories, is unique to the Act, which was just signed into law earlier this year. Consequently, there is no data available that would permit the Department to identify which temporary help service firms make such “designated

classification placements.” Nevertheless, to the extent that *any* temporary help service firms in the business of making “designated classification placements,” as that term is defined in the Act, also meet the definition of “small employer” within the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. (resident in this State, independently owned and operated, not dominant in its field, and employs fewer than 100 full-time employees), the proposed new rules would impose recordkeeping and compliance requirements on those small businesses. The records that a temporary help service firm or third-party client must keep under the proposed new rules (as mandated by the Act), are basic employment and business records that the temporary help service firm should already be keeping, such as the name and contact information of its employees, the name and contact information of its clients, the dates on which contracts for services were entered into with clients, the dates on which services were rendered to clients by employees, hours worked by employees, hours billed to clients, employee wages paid, copies of contracts, copies of invoices, and a record of deductions made from employee wages. As to compliance requirements, as described in in the Summary above, they include the notification requirements, the transportation requirements, the post-employment restrictions and related placement fee cap, the pay equity requirements, the employee charge and payroll deduction restrictions, and the non-utilization payment requirement, among others. By providing within the proposed new rules the types of step-by-step instructions for compliance that are described in the Social Impact statement, it is the Department’s hope that it is eliminating confusion surrounding compliance with the Act, which in turn, it is hoped, is minimizing possible adverse impact on affected businesses, including small businesses. Otherwise, the

recordkeeping and compliance requirements contained in the proposed new rules are expressly dictated by the Act, from which the Department has no discretion to deviate based upon the size of a business or for any other reason.

Housing Affordability Impact Analysis

The proposed new rules would not evoke a change in the average costs associated with housing. The basis for this finding is that the proposed new rules pertain to the working conditions of temporary laborers. The proposed new rules do not pertain to housing.

Smart Growth Development Impact Analysis

The proposed new rules would not evoke a change in the housing production within Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The basis for this finding is that the proposed new rules pertain to the working conditions of temporary laborers. The proposed new rules do not pertain to housing production, either within Planning Areas 1 or 2, within designated centers, or anywhere in the State of New Jersey.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commissioner has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposed new rules follows:

CHAPTER 72 TEMPORARY LABORERS

SUBCHAPTER 1 GENERAL PROVISIONS

12:72-1.1 Purpose and scope

- (a) The purpose of this chapter is to implement N.J.S.A. 34:8D-1 through 7, and 10 (the Act), which contain workplace protections, as well as temporary help service firm and third-party client responsibilities, that are enforced by the Department of Labor and Workforce Development for the benefit of temporary laborers.
- (b) This chapter is applicable to each temporary help service firm that is located, operates, or transacts business within New Jersey.
- (c) This chapter is applicable to each temporary laborer who is employed by a temporary help service firm referred to in (b) above, who also either:
 - 1. Has been assigned by the temporary help service firm to work in a designated classification placement within New Jersey, or
 - 2. Has been assigned by the temporary help service firm to work in a designated classification outside of New Jersey, but who has his or her primary residence in New Jersey.
- (d) This chapter applies to each third-party client that contracts with a temporary help service firm referred to in (b) above, for the services of a temporary laborer referred to in (c) above.

12:72-1.2 Retaliation prohibited

(a) No temporary help service firm or third-party client, or agent of a temporary help service firm or third-party client, shall retaliate through discharge or in any other manner against a temporary laborer for exercising any rights granted the temporary laborer under N.J.S.A. 34:8D-1 et seq., or this chapter, including but not limited to, the following:

1. Making a complaint to a temporary help service firm, to a third-party client, to a co-worker, to a community organization, before a public hearing, or to a State or federal agency that rights guaranteed under N.J.S.A. 34:8D-1 et seq., have been violated;
2. Instituting any proceeding under or related to N.J.S.A. 34:8D-1 et seq.; and
3. Testifying or preparing to testify in an investigation or proceeding under N.J.S.A. 34:8D-1 et seq.

(b) When within 90 days of the temporary laborer's exercise of rights protected under N.J.S.A. 34:8D-1 et seq., a temporary help service firm either terminates the temporary laborer's employment or takes any disciplinary action against the temporary laborer, there shall arise a rebuttable presumption that the termination or other disciplinary action was in retaliation for the temporary laborer's exercise of rights.

12:72-1.3 Administrative penalties

(a) When the Commissioner finds that a temporary help service firm has violated any requirement(s) contained in N.J.S.A. 34:8D-3 or N.J.A.C. 12:72-3.1 through 3.5, the

Commissioner is authorized to assess and collect an administrative penalty against the temporary help service firm for each violation in an amount not less than \$500 and not to exceed \$1,000.

(b) When the Commissioner finds that a third-party client has violated any requirement(s) contained in N.J.S.A. 34:8D-4(a)(2) or N.J.A.C. 12:72-4.2, the Commissioner is authorized to assess and collect an administrative penalty against the third-party client for each violation in an amount not to exceed \$500.

1. The third-party client's failure to remit accurate time records to the temporary help service firm as required in N.J.S.A. 34:8D-4(a)(2) or N.J.A.C. 12:72-4.2 shall not constitute a violation of that law or that rule and shall not be the basis for the assessment or collection of an administrative penalty against the third-party client when the third-party client has been precluded from submitting those time records for reasons beyond its control.

(c) When the Commissioner finds that a temporary help service firm has violated the requirement contained in N.J.S.A. 34:8D-5(d)(2) or N.J.A.C. 12:72-4.1(b), that it obtain, and keep on file, documentation that any provider of transportation to temporary laborers with which the temporary help service firm contracts or to which the temporary help service firm makes referrals, is in compliance with N.J.S.A. 34:8D-5(e), (f), and (g), the Commissioner is authorized to assess and collect an administrative penalty against the temporary help service firm for each violation in an amount not to exceed \$500.

(d) When the Commissioner finds that a temporary help service firm has violated any requirement(s) contained in N.J.S.A. 34:8D-5 (with the exception of N.J.S.A. 34:8D-5(d)(2)), or N.J.A.C. 12:72-5.1 through 5.5, the Commissioner is authorized to assess

and collect an administrative penalty against the temporary help service firm for each violation in an amount not to exceed \$5,000.

(e) When the Commissioner finds that a temporary help service firm has violated any requirement(s) contained in N.J.S.A. 34:8D-6 or N.J.A.C. 12:72-8.1 through 8.4, or N.J.A.C. 12:72-9.1 through 9.7, the Commissioner is authorized to assess and collect an administrative penalty against the temporary help service firm for each violation in an amount not to exceed \$500.

(f) When the Commissioner finds that a third-party client has violated the work verification requirement contained in N.J.S.A. 34:8D-6(a) or N.J.A.C. 12:72-9.2, the Commissioner is authorized to assess and collect an administrative penalty against the third-party client for each violation in the following amounts:

1. First violation – not to exceed \$500;
2. Second and subsequent violations – not to exceed \$2,500.

(g) When the Commissioner finds that a temporary help service firm has violated any requirement(s) contained in N.J.S.A. 34:8D-7 or N.J.A.C. 12:72-6.1, 6.2, 7.1 or 7.2, the Commissioner is authorized to assess and collect an administrative penalty against the temporary help service firm for each violation in an amount not to exceed \$5,000.

1. If a third-party client leases or contracts with a temporary help service firm for the services of a temporary laborer, the third-party client and the temporary help service firm shall be jointly and severally responsible for a violation of the requirements contained in N.J.S.A. 34:8D-7 or N.J.A.C. 12:72-6.1, 6.2, 7.1 or 7.2, including with respect to any administrative penalty assessed by the Commissioner under this subsection for any such violation(s).

(h) When the Commissioner finds that a temporary help service firm or third-party client has violated any requirement(s) contained in N.J.S.A. 34:8D-10 or N.J.A.C. 12:72-1.2, the Commissioner is authorized to assess and collect an administrative penalty against the temporary help service firm or the third-party client, as appropriate, for each violation in the following amounts:

1. First violation – not to exceed \$250;
2. Second and subsequent violations – not to exceed \$500.

(i) In assessing an administrative penalty under this section, the Commissioner shall consider the following factors, where applicable, in determining what constitutes an appropriate penalty for the particular violation(s):

1. The seriousness of the violation(s);
2. The past history of violations by the temporary help service firm or third-party client, as appropriate;
3. The good faith of the temporary help service firm or third-party client, as appropriate;
4. The size of the temporary help service firm's or third-party client's business, as appropriate; and
5. Any other factors that the Commissioner deems appropriate in determining the penalty assessed.

12:72-1.4 Hearings

(a) When the Commissioner assesses an administrative penalty under N.J.A.C. 12:72-1.3, the temporary help service firm or third-party client against which the

administrative penalty has been assessed shall have the right to a hearing under (b) below.

(b) No administrative penalty shall be levied under N.J.A.C. 12:72-1.3 unless the Commissioner provides the alleged violator with notification by certified mail of the violation and the amount of the penalty and an opportunity to request a formal hearing. A request for a formal hearing must be received within 15 business days following receipt of the notice. All hearings shall be held pursuant to the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedures Rules, N.J.A.C. 1:1.

(c) All requests for hearing will be reviewed by the Division of Wage and Hour and Contract Compliance to determine if the dispute may be resolved at an informal settlement conference. If following its review, the Division determines that an informal settlement conference is warranted, such conference will be scheduled. If a settlement cannot be reached, the case will be forwarded to the Office of Administrative law for a formal hearing.

(d) The Commissioner shall make the final decision of the Department.

(e) If the temporary help service firm or third-party client fails to request a formal hearing within 15 days following receipt of the notice, the notice shall become a final order.

(f) Appeals of the final decision of the Commissioner under (d) above or a final order under (e) above shall be made to the Appellate Division of the New Jersey Superior Court.

12:72-1.5 Processing of complaints

(a) Any complaint filed with the Division that alleges a violation of the Act or this chapter shall be processed in the same manner as a complaint filed with the Division under the New Jersey Wage and Hour Law, N.J.S.A. 34:11-56a et seq., and the rules promulgated thereunder.

SUBCHAPTER 2 DEFINITIONS

12:72-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“Act” means N.J.S.A. 34:8D-1 through 7, and 10.

“Benefits” means employee fringe benefits, including but not limited to, health insurance, life insurance, disability insurance, paid time off (including vacation, holidays, personal leave and sick leave in excess of what is required by law) training, and pension. The term “benefits” does not include employee fringe benefits that an employer is required by law to provide to its employees (e.g., earned sick leave under N.J.S.A. 34:11D-1 et seq.).

“Commissioner” means the Commissioner of the Department of Labor and Workforce Development or their designee.

“Comparator employee” means an employee of the third-party client to which the temporary laborer is assigned, who is performing the same or substantially similar work to that of the temporary laborer at the time the temporary laborer is assigned to the

third-party client, on a job the performance of which requires equal skill, effort, and responsibility to that of the temporary laborer, and which is performed under similar working conditions.

“Division” means the Division of Wage and Hour and Contract Compliance.

“Employ” means to suffer or permit to work for compensation, including by means of ongoing contractual relationships in which the employer retains substantial direct or indirect control over the employee’s employment opportunities or terms and conditions of employment.

“Employer” means any person or corporation, partnership, individual proprietorship, joint venture, firm, company, or other similar legal entity who engages the services of an employee and who pays the employee’s wages, salary, or other compensation, or any person acting directly or indirectly in the interest of an employer in relation to an employee.

“Hours worked” means all of the time that the employee is required to be at the employee’s place of work or on duty. Nothing in N.J.S.A. 34:8D-1 et seq., requires an employer to pay an employee for hours the employee is not required to be at the employee’s place of work because of holidays, vacation, lunch hours, illness, and similar reasons.

“Designated classification placement” means an assignment of a temporary laborer by a temporary help service firm to perform work in any of the following occupational categories as designated by the Bureau of Labor Statistics of the United States Department of Labor:

33-9099 Other Protective Service Workers;

35-0000 Food Preparation and Serving Related Occupations;
37-0000 Building and Grounds Cleaning and Maintenance Occupations;
39-0000 Personal Care and Service Occupations;
47-2060 Construction Laborers;
47-3019 Helpers, Construction Trades;
49-0000 Installation, Maintenance, and Repair Occupations;
51-0000 Production Occupations;
53-0000 Transportation and Material Moving Occupations

“Person” means any natural person or their legal representative, partnership, corporation, company, trust, business entity, or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee, or beneficiary of a trust thereof.

“Primary residence” means a dwelling where a person usually lives and does not include second homes. A person may only have one primary residence at any given time.

“Temporary laborer” means a person who contracts for employment in a designated classification placement with a temporary help service firm. Temporary laborer does not include agricultural crew leaders who are registered under the federal Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1801 et seq., N.J.S.A. 34:8A-7 et seq., or N.J.S.A. 34:9A-1 et seq.

“Temporary help service firm” means any person or entity who operates a business which consists of employing individuals directly or indirectly for the purpose of assigning the employed individuals to assist the firm’s customers in the handling of the

customer's temporary, excess or special workloads, and who, in addition to the payment of wages or salaries to the employed individuals, pays federal social security taxes and State and federal unemployment insurance; carries workers' compensation insurance as required by State law; and sustains responsibility for the actions of the employed individuals while they render services to the firm's customers. A temporary help service firm is required to comply with the provisions of N.J.S.A. 56:8-1 et seq.

"Third-party client" means any person who contracts with a temporary help service firm for obtaining temporary laborers in a designated classification placement. The term, "third-party client," does not include the State or any office, department, division, bureau, board, commission, agency, or political subdivision thereof that utilizes the services of temporary help service firms.

SUBCHAPTER 3 REQUIRED NOTICES FROM TEMPORARY HELP SERVICE FIRM

TO TEMPORARY LABORER

12:72-3.1 Assignment notification statement at dispatch

(a) At the time a temporary help service firm dispatches a temporary laborer to work in a designated classification placement, the temporary help service firm shall provide the temporary laborer with an assignment notification statement using the form made available at that time on the Department website at

<https://www.nj.gov/labor/wageandhour/>.

1. The Commissioner will not accept applications from temporary help service firms for approval of other assignment notification statement forms.

2. The Commissioner, using the Department website in the manner described in (a) above, will publish a single approved assignment notification form, which the Commissioner may amend from time to time.

(b) The assignment notification statement in (a) above shall be provided by the temporary help service firm to the temporary laborer in English and in the language identified by the employee as the employee's primary language.

(c) The assignment notification statement in (a) above shall be provided by the temporary help service firm to the temporary laborer in a manner appropriate to whether the assignment is accepted at the temporary help service firm's office, or remotely by telephone, text, email, or other electronic exchange.

1. Where the assignment is accepted and dispatch to the assignment occurs remotely by text, email or other electronic exchange, the temporary help service firm shall provide the temporary laborer with the assignment notification statement (and obtain acknowledgment of receipt of the assignment notification statement if the temporary help service firm intends to do so) by text, email or other electronic exchange, and may not require the temporary laborer to travel to the office of the temporary help service firm solely to receive or acknowledge receipt of the assignment notification statement.

2. Where the assignment is accepted and dispatch to the assignment occurs remotely by telephone, the temporary help service firm shall provide the temporary laborer the option of receiving the assignment notification statement (and acknowledging receipt of the assignment notification statement if the temporary help service firm intends to do so) either (i) by text, email or other

electronic exchange, or (ii) by traveling to the office of the temporary help service firm and receiving (and acknowledging receipt of) the assignment notification statement in person.

3. Where the assignment is accepted and dispatch to the assignment occurs in person at the office of the temporary help service firm, the temporary help service firm shall provide the temporary laborer with the assignment notification statement (and obtain acknowledgement of receipt of the assignment notification statement if the temporary help service firm intends to do so) in person at the office of the temporary help service firm.

(d) When the temporary laborer is assigned to the same assignment for more than one day (a multi-day assignment), the temporary help service firm shall only be required to provide the assignment notification statement to the temporary laborer on the first day of the assignment and on any day that any of the terms listed on the assignment notification statement are changed.

(e) The assignment notification statement in (a) above shall contain the following:

1. The name of the temporary laborer;
2. The name, address and telephone number of the following:
 - i. The temporary help service firm, or the firm's agent facilitating the placement;
 - ii. The temporary help service firm's workers' compensation carrier;
 - iii. The worksite employer or third-party client; and
 - iv. The Department of Labor and Workforce Development;

3. The name and nature of the work to be performed by the temporary laborer;
4. The wages offered to the temporary laborer;
5. The name and address of the assigned worksite of the temporary laborer;
6. The terms of transportation offered to the temporary laborer, if applicable;
7. A description of the position offered to the temporary laborer;
8. Whether the position offered to the temporary laborer will require any special clothing;
 - i. If the position offered to the temporary laborer will require any special clothing, a description of the special clothing required;
 - ii. If the position offered to the temporary laborer will require any special clothing, whether it will be provided by the temporary help service firm at no cost to the temporary laborer; by the third-party client at no cost to the temporary laborer; or by the temporary laborer, and if by the temporary laborer, at what approximate cost to the temporary laborer;
9. Whether the position offered to the temporary laborer will require any protective equipment ;
 - i. If the position offered to the temporary laborer will require any protective equipment, a description of the protective equipment required;
 - ii. If the position offered to the temporary laborer will require any protective equipment, whether it will be provided by the temporary help

service firm at no cost to the temporary laborer; by the third-party client at no cost to the laborer; or by the temporary laborer, and if by the temporary laborer, at what approximate cost to the temporary laborer;

10. Whether the position offered to the temporary laborer will require any training;

i. If the position offered to the temporary laborer will require any training, a description of the training required;

ii. If the position offered to the temporary laborer will require any training, whether it will be provided by the temporary help service firm at no cost to the temporary laborer; by the third-party client at no cost to the laborer; or by the temporary laborer, and if by the temporary laborer, at what approximate cost to the temporary laborer;

11. Whether the position offered to the temporary laborer will require any supplies;

i. If the position offered to the temporary laborer will require any supplies, a description of the supplies required;

ii. If the position offered to the temporary laborer will require any supplies, whether they will be provided by the temporary help service firm at no cost to the temporary laborer; by the third-party client at no cost to the laborer; or by the temporary laborer, and if by the temporary laborer, at what approximate cost to the temporary laborer;

12. Whether any meal(s) will be provided to the temporary laborer by the temporary help service firm or the third-party client; and, if yes, list the cost to the temporary laborer, if any;

13. Whether equipment (other than protective equipment) will be provided to the temporary laborer by the temporary help service firm or the third-party client; and, if yes, list the cost to the temporary laborer, if any;

14. Whether the position offered to the temporary laborer will require any license(s);

i. If the position offered to the temporary laborer does require any license(s), a description of the license(s) required;

ii. For the purpose of this paragraph, the term "license" shall include any license or certification needed to perform any occupation or occupational activity;

15. Terms of the transportation offered to the temporary laborer, if applicable;

16. For multi-day assignments, the schedule;

17. The length of the assignment, if known; and

18. The amount of sick leave to which temporary laborers are entitled under the New Jersey Earned Sick Leave Law, N.J.S.A. 34:11D-1 et seq., and the terms of its use.

12:72-3.2 Notice of change on multi-day assignment

(a) For a multi-day assignment, when there is a change in the schedule, shift or location, the temporary help service firm shall, when possible, provide notice 48 hours in advance of the change to the temporary laborer in a manner appropriate to whether the assignment was accepted at the temporary help service firm's office, or remotely by telephone, text, email or other electronic exchange.

1. Where the assignment is accepted remotely by text, email or other electronic exchange, the temporary help service firm shall provide the temporary laborer with notice of the change in schedule, shift or location (and obtain acknowledgment of receipt of the notice of change if the temporary help service firm intends to do so) by text, email or other electronic exchange, and may not require the temporary laborer to travel to the office of the temporary help service firm solely to receive notice of the change or acknowledge receipt of the notice of change.

2. Where the assignment is accepted by telephone or in person at the office of the temporary help service firm, the temporary help service firm shall at the time of dispatch provide the temporary laborer the option of receiving notices of change in schedule, shift or location (and acknowledging receipt of notices of change if the temporary help service firm intends to do so) either (i) by telephone, (ii) by text, email or other electronic exchange, or (iii) by traveling to the office of the temporary help service firm.

(b) The temporary help service firm shall bear the burden of showing that it was not possible to provide the required notice.

(c) In the event that the Commissioner imposes an administrative penalty against a temporary help service firm under N.J.A.C. 12:72-1.2 for failure to provide the notice of change required under this section and the temporary help service firm requests a hearing under N.J.A.C. 12:72-1.3 to challenge the administrative penalty, any dispute concerning whether it was possible for the temporary help service firm to provide the notice of change required under this section shall be adjudicated during that hearing.

12:72-3.3 Notice of labor dispute

(a) No temporary help service firm shall send any temporary laborer to any designated classification placement where a strike, lockout, or other labor dispute exists without providing, at the time of dispatch, a statement, in writing, informing the temporary laborer of the labor dispute, and the temporary laborer's right to refuse the assignment.

(b) The requirement in (a) above shall apply only where the strike, lockout or other labor dispute is occurring at the factory, establishment or other premises to which the temporary laborer is being assigned by the temporary help service firm.

12:72-3.4 Confirmation of having sought work

(a) On any day that a temporary laborer who is employed by the temporary help service firm is not placed with a third-party client or otherwise contracted to work, the temporary help service firm shall provide to the temporary laborer, upon the temporary laborer's request, written confirmation that the temporary laborer sought work on that day.

(b) The written confirmation provided under (a) above shall be signed by an employee of the temporary help service firm, shall indicate the date and time that the written confirmation was received by the temporary laborer, and shall include the name of the temporary help service firm, and the name and address of the temporary laborer.

12:72-3.5 Translation of notices into languages other than English

(a) It shall be the responsibility of the temporary help service firm to make the assignment notification statement required under N.J.A.C. 12:72-3.1, the notices required under N.J.A.C. 12:72-3.2 and 12:72-3.3, and the written confirmation required under N.J.A.C. 12:72-3.4, available to temporary laborers in Spanish or in any other language that is generally understood in the locale of the temporary help service firm.

1. For the purpose of this section, the phrase, "any other language that is generally understood in the locale of the temporary help service firm" means the language identified by the employee as the employee's primary language.

(b) The temporary help service firm may meet the requirement under (a) above either through its own employees or through the services of a vendor.

(c) Whether the Department makes the assignment notification statement required under N.J.A.C. 12:72-3.1, either of the notices required under N.J.A.C. 12:72-3.2 and 12:72-3.3, or the written confirmation required under N.J.A.C. 12:72-3.4, available to temporary help service firms in Spanish and/or other languages, this does not relieve the temporary help service firm of its responsibility under (a) above (and under N.J.S.A. 34:8D-2(c)) to make the notices available to temporary laborers in

Spanish and in any other language that is generally understood in the locale of the temporary help service firm.

SUBCHAPTER 4 RECORDKEEPING

12:72-4.1 Recordkeeping obligations; temporary help service firm

(a) A temporary help service firm shall keep the following records with regard to each assignment of a temporary laborer to work in a designated classification placement:

1. The name and address of the temporary laborer;
2. The name, address, and telephone number of the third-party client,
3. The date on which the temporary help service firm contracted with the third-party client for the services of the temporary laborer;
4. The name, address and telephone number of each worksite to which the temporary laborer was sent by the temporary help service firm, and the date that the temporary laborer was sent to each worksite;
5. The name and nature of the work that was performed by the temporary laborer;
6. The number of hours that were worked by the temporary laborer;
7. The number hours billed by the temporary help service firm to the third-party client for the temporary laborer's hours of work;
8. The temporary laborer's hourly rate of pay;

9. The name and title of the individual(s) at the third-party client who are responsible for the temporary laborer's assignment;
10. Any specific qualifications or attributes of a temporary laborer that were requested by the third-party client for the assignment;
11. Copies of the contract(s) with the third-party client for the assignment;
12. Copies of any invoice(s) provided by the temporary help service firm to the third-party client for payment in relation to the assignment;
13. Copies of the statements, notices, and written confirmations, provided by the temporary help service firm to the temporary laborer under N.J.A.C. 12:72-3.1 through 3.4 above;
14. A record of any deductions made from the temporary laborer's wages, including a description of each deduction and the amount of each deduction; and
15. Verification of the actual cost to the temporary help service firm or third-party client of any equipment or meal charged to the temporary laborer.

- (b) The temporary help service firm shall obtain, and keep on file, documentation that any provider of transportation to a temporary laborer that the temporary help service firm makes referrals to or contracts with is in compliance with the requirements of N.J.S.A. 34:8D-5(e), (f) and (g).
- (c) Each record listed in (a) and (b) above shall be maintained by the temporary help service firm for a period of six years from the date of the record's creation.

12:72-4.2 Recordkeeping and record remitting obligations; third-party client

(a) A third-party client shall keep the following records with regard to each temporary laborer assigned by a temporary help service firm to work in a designated classification placement for the third-party client:

1. The name, address and telephone number of each worksite to which the temporary laborer was sent by the temporary help service firm, and the date that the temporary laborer was sent to each worksite;
2. The name and nature of the work that was performed by the temporary laborer;
3. The number of hours that were worked by the temporary laborer;
4. The temporary laborer's hourly rate of pay;

(b) For each work week in which the temporary laborer performed work with the third-party client, the third-party client shall remit the records listed in (a) above to the temporary help service firm no later than seven business days after the last day of the work week.

1. For the purpose of this subsection, unless expressly set forth otherwise in an agreement between the temporary help service firm and the third-party client, the last day of each work week is the Sunday of that calendar week.

12:72-4.3 Inspection

(a) All records maintained by the temporary help service firm under N.J.A.C. 12:72-4.1 shall be open to inspection by the Commissioner during normal business hours.

(b) All records listed in N.J.A.C. 12:72-4.1(a), with the exception of the records listed in N.J.A.C. 12:72-4.1(a)10., 11. and 12., shall be made available by the temporary help service firm during normal business hours for copying by the temporary laborer or by an authorized representative of the temporary laborer at no cost to the temporary laborer or to the temporary laborer's authorized representative.

1. As a condition to obtaining access to and/or copying records under this subsection, the temporary laborer or the authorized representative of the temporary laborer may be required to submit a written request to the temporary help service firm.

2. Upon receipt of the written request for access and/or copying under 1. above, the temporary help service firm shall provide the temporary laborer or the authorized representative of the temporary laborer access to and the facilities to copy the requested records within five business days.

3. As a condition to an authorized representative of the temporary laborer obtaining access to and/or copying records under this subsection, the authorized representative must submit with the request a written authorization, signed by the temporary laborer, that expressly permits the authorized representative to review and copy the subject records.

4. The temporary help service firm shall make available to temporary laborers and their authorized representatives at the office of the temporary help service firm forms for use by temporary laborers and their authorized representatives in submitting requests to access and/or copy records under (b) above.

(c) The temporary help service firm shall not make any false, inaccurate, or incomplete entry into, or delete, any required information from any record required to be kept by the temporary help service firm under N.J.A.C. 12:72-4.1.

SUBCHAPTER 5 TRANSPORTATION

12:72-5.1 Requiring use prohibited

(a) A temporary help service firm shall not require a temporary laborer to use transportation provided by the temporary help service firm or by another provider of transportation services.

12:72-5.2 Charging a fee prohibited

(a) A temporary help service firm or a third-party client, or a contractor or agent of either, shall not charge a fee to a temporary laborer to transport the temporary laborer to or from the worksite.

12:72-5.3 Referrals

(a) A temporary help service firm shall not refer a temporary laborer to any person for transportation to or from a worksite, unless that person is either:

1. A public mass transportation system; or
2. Providing the transportation at no fee to the temporary laborer;

(b) For the purpose of this section, the following shall be considered a referral by the temporary help service firm:

1. Directing a temporary laborer to accept a specific carpool as a condition of work; or

2. Any mention or discussion of the cost of a carpool;

(c) For the purpose of this section, the following shall not be considered a referral by the temporary help service firm:

1. Informing a temporary laborer of the availability of a carpool driven by another temporary laborer.

12:72-5.4 Motor vehicle safety

(a) If a temporary help service firm provides transportation to a temporary laborer or refers a temporary laborer to any person for transportation to a worksite, the temporary help service firm shall not allow a motor vehicle to be used for the transporting of the temporary laborer if the temporary help service firm knows or should know that the motor vehicle used for the transportation of the temporary laborer is unsafe, or if any of the following circumstances exist:

1. The motor vehicle is not insured in accord with the minimum insurance requirements set by the State of New Jersey;

2. The driver of the motor vehicle does not hold a valid license to operate motor vehicles in the correct classification; or

3. The motor vehicle does not have a seat and safety belt for each passenger.

(b) If the Department becomes aware of any of the circumstances set forth in

(a)1. through (a)3. above, with regard to a motor vehicle that is owned or operated by a

temporary help service firm that makes designated classification placements or a third-party client of such a firm, or a contractor or agent of either, or a person to which a temporary help service firm refers a temporary laborer, which is used for the transportation of temporary laborers, it shall, in addition to or as an alternative to the assessment of a penalty against the temporary help service firm under N.J.A.C. 12:72-1.3(d), refer the matter to the appropriate law enforcement authority or regulatory agency.

12:72-5.5 Transportation back to point of hire

(a) Unless the temporary laborer requests otherwise, when a temporary laborer has been transported to a worksite, the temporary help service firm or a third-party client, or a contractor or agent of either, shall provide transportation back to the point of hire at the end of each work day.

1. For the purpose of this section, the term “point of hire” shall mean the location from which the temporary laborer was dispatched to perform work for the third-party client.

SUBCHAPTER 6 POST EMPLOYMENT RESTRICTIONS

12:72-6.1 Post employment restriction prohibited

(a) A temporary help service firm shall be prohibited from placing any restriction on a temporary laborer from either, accepting a permanent position with a third-party

client to which the temporary help service firm has assigned the temporary laborer to perform work, or accepting any other permanent employment.

(b) A temporary help service firm shall be prohibited from placing any restriction on a third-party client from offering employment to a temporary laborer, except that the temporary help service firm may charge the third-party client a placement fee as set forth in N.J.A.C. 12:72-6.2.

12:72-6.2 Placement fee

(a) A temporary help service firm may charge a placement fee to a third-party client when the third-party client employs a temporary laborer who had been assigned by the temporary help service firm to perform work for the third-party client.

(b) The placement fee in (a) above shall not exceed the equivalent of the total daily commission rate that the temporary help service firm would have received over a 60-day period, reduced by the equivalent of the daily commission rate that the temporary help service firm would have received for each day the temporary laborer would have performed work for the temporary help service firm in the preceding 12 months.

(c) The following method shall be used to determine the maximum placement fee that may be charged by a temporary help service firm to a third-party client relative to the services of a given temporary laborer:

1. First, calculate the daily commission rate by subtracting the daily wages paid by the temporary help service firm to the temporary laborer for work performed on assignment to the third-party client and the daily cost to the

temporary help service firm of benefits provided to the temporary laborer during the period of the temporary laborer's assignment with the third-party client, from the total daily amount paid by the third-party client to the temporary help service firm for the services of the temporary laborer;

2. Second, multiply the amount arrived at in (c)1. above by 43 (8.6 work weeks, multiplied by 5 workdays per week, for a total of 43 workdays), to arrive at the "equivalent of the total daily commission rate that the temporary help service firm would have received over a 60-day period;"

3. Third, multiply the amount arrived at in (c)1. above by the number of days that the temporary laborer performed work for third-party clients of the temporary help service firm during the 12-month period immediately preceding the date upon which the temporary laborer accepted an offer of employment by the third-party client; and

4. Fourth, subtract the amount arrived at in (c)3. above from the amount arrived at in (c)2. above.

5. If the amount arrived at in (c)4. above is a positive number, then that is the maximum placement fee that may be charged by the temporary help service firm to the third-party client. If the amount arrived at in (c)4. above is either zero or a negative number, then the maximum placement fee that may be charged by the temporary help service firm to the third-party client is zero.

(d) A temporary help service firm shall be prohibited from collecting a placement fee during any period of suspension, revocation or non-renewal of its certification to

make designated classification placements by the Director of the Division of Consumer Affairs.

SUBCHAPTER 7 PAY EQUITY

12:72-7.1 Temporary laborer pay equity requirement

(a) Any temporary laborer assigned to work at a third party client in a designated classification placement shall not be paid less than the average rate of pay and average cost of benefits, or the cash equivalent thereof, of employees of the third party client performing the same or substantially similar work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions for the third party client at the time the temporary laborer is assigned to work at the third party client.

12:72-7.2 Calculation of the hourly rate of pay that the temporary help service firm must pay the temporary laborer based on the average rate of pay and average cost of benefits of comparator employees of the third-party client

(a) At the time that the temporary help service firm contracts with the third-party client for the services of the temporary laborer, the third-party client shall provide to the temporary help service firm a listing of the hourly rate of pay and cost per hour of benefits for each employee of the third-party client who the third-party client determines would be a comparator employee.

(b) The temporary help service firm shall base its calculation of the average rate of pay and average cost of benefits for comparator employees of the third-party client,

for the purpose of determining the temporary laborer's hourly rate of pay, on the information that it receives from the third-party client under (a) above.

- (c) Where the third-party client pays a comparator employee on a salary basis, the hourly rate of pay for the comparator employee shall be calculated by dividing the annual salary paid to the comparator employee by 2,080 hours.
- (d) To calculate the cost per hour of benefits, the annual cost to the employer of benefits shall be divided by 2,080 hours.
- (e) In order for the temporary help service firm to determine under this section the appropriate hourly rate of pay for the temporary laborer on a designated classification placement, the temporary help service firm shall use the following method:
 1. Take the sum of the hourly rates of pay of the comparator employees identified by the third-party client and divide it by the number of comparator employees to arrive at the average hourly rate of pay of the third-party client's comparator employees;
 2. Take the sum of the cost per hour of benefits of the comparator employees identified by the third-party client and divide it by the number of comparator employees to arrive at the average cost per hour of benefits of the third-party client's comparator employees;
 3. Subtract the cost per hour of benefits provided by the temporary help service firm to the temporary laborer, from the sum of the average hourly rate of pay of the third-party client's comparator employees and the average cost per hour of benefits of the third-party client's comparator employees;

4. The amount in 3. above is the hourly rate of pay that the temporary help service firm shall pay the temporary laborer for all work performed on the designated classification placement.

12:72-7.3 Determining whether a temporary laborer and third-party client employee are performing substantially similar work

(a) The following principles should be applied when determining whether a temporary laborer and an employee of the third-party client are performing substantially similar work:

1. Substantially similar work should be viewed as a composite of skill, effort and responsibility performed under similar working conditions;
2. Functions and duties need not be identical in order to be substantially similar;
3. Occasional, trivial or minor differences in duties that only consume a minimal amount of the employee's time will not render the work dissimilar;
4. Job titles and job descriptions are relevant, but not dispositive of whether two individuals are performing substantially similar work;
5. The determination should focus on an analysis of the actual job duties performed, not the specific person performing the work;
6. The analysis should be applied to a full work cycle, not just a snap shot of a particular time period or day.
7. Skill is measured by factors such as the experience, ability, education and training required to perform a job.

8. Effort is the amount of physical or mental exertion needed to perform a job.

9. Responsibility is the degree of accountability and discretion required to perform a job.

10. The number of years of service (i.e., seniority) of a particular employee is not relevant to the determination of whether two jobs are substantially similar, even where the third-party client's employee compensation system is seniority based; but rather, what is relevant is the number of years of experience that are required to perform a job.

i. For example, if the job to which the temporary laborer is being assigned with the third-party client requires five years of relevant experience and the job being performed by the prospective comparator employee of the third-party client requires five years of the same experience, this would be a factor mitigating in favor of a finding that the two jobs are substantially similar, notwithstanding that the comparator employee of the third-party client has worked for the third-party client for more than five years.

11. The third-party client's use of a merit system for the compensation of its employees is not relevant to the determination of whether two jobs are substantially similar.

12. Working conditions, for the purpose of determining whether two jobs are being performed under similar working conditions, means the physical surroundings and hazards, but does not include job shifts.

SUBCHAPTER 8 CHARGES; PAYROLL DEDUCTIONS

12:72-8.1 Unreturned reusable equipment

(a) A temporary help service firm may deduct from the wages of a temporary laborer the actual market value of unreturned reusable equipment that was provided to the temporary laborer by the temporary help service firm; provided that the temporary laborer authorizes the deduction in writing at the time the deduction is made.

12:72-8.2 Additional equipment, clothing, accessories, or other items which are not required by the nature of the work, that are made available for purchase

(a) When a temporary help service firm makes available for purchase by a temporary laborer any equipment, clothing, accessories, or other items that are not required by the nature of the work, either by law, custom or as a requirement of the third-party client, the temporary help service firm shall charge no more than the actual market value.

12:72-8.3 Meals

(a) A temporary help service firm shall not charge a temporary laborer for a meal not consumed by the temporary laborer and, if consumed, shall charge no more than the actual cost of the meal.

(b) A temporary help service firm shall not condition the employment of a temporary laborer on the purchase of a meal.

12:72-8.4 Consumer report, criminal background check, or drug test

(a) No temporary help service firm or third-party client shall charge a temporary laborer for the expense of conducting a consumer report, as that term is defined in the "Fair Credit Reporting Act," (15 U.S.C. 1681 et seq.), a criminal background check, or a drug test.

SUBCHAPTER 9 OTHER TEMPORARY HELP SERVICE FIRM RESPONSIBILITIES,
THIRD-PARTY CLIENT RESPONSIBILITIES, AND TEMPORARY LABORER
PROTECTIONS

12:72-9.1 Detailed itemized statement

(a) At the time the temporary help service firm pays the temporary laborer their wages, the temporary help service firm shall provide the temporary laborer with a detailed itemized statement, either on the temporary laborer's paycheck stub, or using the form made available at that time on the Department website at <https://www.nj.gov/labor/wageandhour/>, listing the following:

1. The name, address and telephone number of each third-party client at which the temporary laborer worked during that pay period;
 - i. If the information in this paragraph is provided on the temporary laborer's paycheck stub, the temporary help service firm may use a code for each third-party client, so long as the temporary help service firm also makes available to each temporary laborer at that time a key containing

the name, address and telephone number for each coded third-party client.

2. The number of hours worked by the temporary laborer at each third-party client on each day during that pay period;

i. If the temporary laborer is assigned to work at the same worksite of the same third-party client for multiple days in the same work week, the temporary help service firm may provide the temporary laborer with the total hours worked at the third-party client's worksite during the pay period (as opposed to a daily accounting), so long as the first and last day of that work are identified;

3. The rate of pay for each hour worked by the temporary laborer during that pay period, including any premium rate or bonus;

4. The total pay period earnings;

5. The total amount of each deduction made from the temporary laborer's wages made by the temporary help service firm, and the purpose for which each deduction was made, including for the temporary laborer's food, equipment, withheld income tax, withheld Social Security deductions, withheld contributions to the State unemployment compensation trust fund and the State disability benefits trust fund, and every other deduction;

6. The current maximum amount of a placement fee under N.J.A.C. 12:72-6.2(c), which the temporary help service firm may charge to the third-party client to directly hire the temporary laborer;

7. The total amount charged by the temporary help service firm to the third-party client for the services of the temporary laborer during that pay period; and

8. Total cost to the temporary help service firm of benefits provided to the temporary laborer during that pay period.

12:72-9.2 Work verification; third-party client

(a) For the temporary laborer who is assigned to work a single day (as opposed to a multi-day assignment), the third-party client shall, at the end of the work day, provide the temporary laborer with a work verification, using the form made available at that time on the Department website at <https://www.nj.gov/labor/wageandhour/>.

(b) The work verification provided to the temporary laborer under (a) above shall contain the following:

1. The date;
2. The name of the temporary laborer;
3. The name and address of the work location; and
4. The start time, end time, and total hours worked on that day.

12:72-9.3 Annual earnings summary

(a) Within a reasonable time after the preceding calendar year, but in no case later than February 1 of the current calendar year, a temporary help service firm shall provide a temporary laborer with an annual earnings summary for the preceding calendar year.

(b) At the time the temporary help service firm pays the temporary laborer their wages, the temporary help service firm shall individually provide the temporary laborer with notice of the availability of the annual earnings summary.

1. As an alternative to the individual notice in (b) above, the temporary help service firm may post notice of the availability of the annual earnings summary in a conspicuous place in the public reception area of the temporary help service firm.

12:72-9.4 Holding of daily wages in favor of bi-weekly payments

(a) At the request of a temporary laborer, a temporary help service firm shall hold the daily wages of the temporary laborer and provide the temporary laborer with bi-weekly payments.

(b) The bi-weekly payment in (a) above shall be made by the temporary help service firm in accordance with the Department's rule regarding time and mode of wage payments at N.J.A.C. 12:55-2.4.

(c) A temporary help service firm that makes daily wage payments shall provide written notification to all temporary laborers of the right to request bi-weekly payments, rather than daily payments.

(d) The notification in (c) above may be provided by the temporary help service firm by conspicuously posting the notice at the location where the daily wages are received by the temporary laborers.

12:72-9.5 Time and mode of wage payments; check cashing fees prohibited

(a) With regard to all payment of wages by a temporary help service firm to a temporary laborer, the temporary help service firm shall adhere to the requirements of N.J.A.C. 12:55-2.4 for employers regarding time and mode of wage payments, which includes but is not limited to, the following requirements:

1. When a wage payment occurs by check, it shall be a check drawn on a financial institution where suitable arrangements are made for the cashing of such checks by employees without difficulty and for the full amount for which they were drawn; and
2. When a fee is charged for the cashing of a payroll check at the banking institution on which the check is drawn, the employer shall bear the burden of the fee.

12:72-9.6 Wage rate

(a) For work performed by a temporary laborer in the position described on the assignment notification statement that is provided to the temporary laborer by the temporary help service firm at the time of dispatch under N.J.A.C. 12:72-3.1, the temporary help service firm shall pay the temporary laborer no less than the "wages offered" that are also indicated on the assignment notification statement.

12:72-9.7 Non-utilization; change in worksite

(a) When a temporary help service firm has contracted with a third-party client for a temporary laborer to perform work at a worksite of the third-party client and the temporary laborer is not utilized (that is, the temporary laborer does not work), the

temporary help service firm shall pay the temporary laborer a minimum of four hours of pay at the agreed upon rate of pay.

(b) When a temporary help service firm has contracted with a third-party client for a temporary laborer to perform work at a worksite of the third-party client, but then contracts with that third-party client or another third-party client for the temporary laborer to perform work at a different worksite during the same shift, the temporary help service firm shall, in addition to any amounts due for work performed by the temporary laborer at the new worksite, pay the temporary laborer a minimum of two hours of pay at the agreed upon rate of pay for the work that would have been performed at the original worksite.

SUBCHAPTER 10 THIRD-PARTY PAYMENTS TO TEMPORARY HELP SERVICE FIRM

12:72-10.1 Third-party client payments to temporary help service firm for wages and related payroll taxes

(a) A third-party client is required to reimburse a temporary help service firm wages and related payroll taxes for services performed for the third-party client by a temporary laborer, according to payment terms outlined on invoices, service agreements, or stated terms provided by the temporary help service firm.

12:72-10.2 Complaints to Commissioner

(a) A temporary help service firm may file a complaint with the Commissioner that a third-party client has violated N.J.A.C. 12:72-10.1.

(b) A complaint under (a) above, shall be filed with the Division either in writing or through any on-line complaint process made available by the Division.

(c) When a complaint under (a) above has been filed by a temporary help service firm, the Division shall review the payroll and accounting records of the temporary help service firm and the third-party client for the period in which the violation is alleged to have occurred to determine if wages and payroll taxes were paid to the temporary help service firm and that the temporary laborer has been paid the wages owed.

(d) At the conclusion of an investigation pursuant to subsection (c) of this section, the Division may issue a determination that a third-party client has failed to pay wages or payroll taxes to the temporary help service firm. A temporary help service may seek a remedy for the third-party client's failure to pay wages or payroll taxes to the temporary help service firm in a court of competent jurisdiction.