

## 56 N.J.R. 1875(a)

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### RULE ADOPTIONS

#### Reporter

56 N.J.R. 1875(a)

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#### Agency

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LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > REGULATED BUSINESS SECTION

#### Administrative Code Citation

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Adopted New Rules: N.J.A.C. 13:45B-12A

#### Text

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##### **Temporary Help Service Firms that Make Designated Classification Placements**

Proposed: August 21, 2023, at 55 N.J.R. 1814(a).

Adopted: April 23, 2024, by Cari Fais, Acting Director, Division of Consumer Affairs.

Filed: August 21, 2024, as R.2024 d.090, **without change**.

Authority: P.L. 2023, c. 10.

Effective Date: September 16, 2024.

Expiration Date: March 14, 2029.

##### **Summary of Public Comments and Agency Responses:**

The official comment period ended on October 20, 2023. To ensure compliance with the Administrative Procedure Act and the rules promulgated by the Office of Administrative Law, the comment period was

extended to October 29, 2023. The Division of Consumer Affairs (Division) received comments from:

1. Bradley J. Bartolomeo, Partner, Lewis Brisbois Bisgaard & Smith LLP
2. Jenny Calvert, Senior Counsel, Randstad US
3. Cristina Inzerillo, Executive Assistant, PROMAN

1. COMMENT: One commenter asks whether the certification, reporting, and surety bond requirements of section 8 at P.L. 2023, c. 10, apply only to the temporary help service firm or to every secondary location where the temporary help service firm conducts its business in New Jersey.

RESPONSE: P.L. 2023, c. 10, commonly referred to as the Temporary Workers' Bill of Rights (TWBR), prohibits any person or entity that meets the definition of "temporary help service firm" and makes "designated classification placements," as those terms are defined in the TWBR, from making any designated classification placements in this State unless the person or entity is certified by the Director of the Division (Director) to do so. Section 8 of the TWBR lists the requirements that each applicant must meet to obtain such certification. In addition, section 8 of the TWBR requires the Director to "assess each temporary help service firm seeking certification a non-refundable certification fee ... and a non-refundable fee ... for each branch office or other location where the temporary help service firm regularly conducts its business ..." Pursuant to the TWBR, each temporary help service firm and each branch office or other location where the temporary help service firm regularly conducts its business in New Jersey must be certified by the Director by applying for certification on a form that will be provided by the Division, paying the requisite certification fee, and submitting the following, as required by section 8 of the TWBR:

1. Proof of an employer account number issued by the Department of Labor and Workforce Development for the payment of unemployment insurance contributions;

2. Proof of valid workers' compensation insurance in effect at the time of certification;

3. The number of temporary laborers previously in designated classification placements whom the temporary help service firm has placed in a permanent position with a third-party client in the preceding 12 months as well as the percentage those permanent placements represent of the total number of temporary laborers in

designated classification placements contracted by the temporary help service firm during the same period;

4. Proof of a surety bond that complies with the requirements of subsection b. of section 8 of the TWBR; and

5. An executed copy of the principal executive officer certification required by subsection c. of section 8 of the TWBR.

2. COMMENT: One commenter asks whether a temporary help service firm's assignment of a management team on the premises of a third-party [page=1876] client triggers the TWBR's certification requirement. The commenter further asks whether such third-party client locations should be considered secondary locations pursuant to the TWBR for purposes of certification, fee payments, and surety bond requirements where the onsite managers:

(1) Do not supervise the temporary laborers in the performance of the activities for which they were assigned to the third-party client; but

(2) Recruit, interview, screen, and onboard temporary laborers at the third-party client's office or factory.

RESPONSE: The TWBR requires temporary help service firms to pay a fee and obtain a certification for "each branch office or other location where the temporary help service firm regularly conducts its business, including but not limited to contracting with and recruiting with temporary laborers for designated classification placement services." Accordingly, a temporary help service firm must obtain a certification by submitting an application and providing proof of compliance with the certification requirements listed in section 8 of the TWBR, including the surety bond requirement, and pay a certification fee for every location, including any third-party client office or factory, that meets the description of a branch office or secondary location to continue to operate legally and make designated classification placements from those locations.

3. COMMENT: One commenter asks the Division to clarify the TWBR's requirements. Specifically, the commenter asks what new or additional certification is needed and what the process for obtaining such certification is and whether there is a certification deadline.

RESPONSE: Currently, entities that provide temporary help services doing business in this State must be registered with, or licensed by, the Division. The TWBR requires entities that provide temporary help services in this State to meet additional requirements to be certified by the Division to lawfully make designated classification placements. The TWBR's certification mandate applies regardless of whether an

entity is licensed or registered as one or more of the entities identified at N.J.S.A. 34:8-43. The requirements of section 8 of the TWBR, including the certification requirement, become enforceable upon the publication of the notice of adoption of the proposed rulemaking. However, to give entities time to apply and allow the Division time to process initial applications, the Division does not intend to take any action against an entity that makes designated classification placements for operating without a certification while an initial application is pending, so long as a completed initial application is submitted by October 16, 2024 (30 days after September 16, 2024 (the effective date of this rulemaking)). In the interim, entities that make designated classification placements must comply with all other applicable laws, rules, and regulations, including existing registration and licensure requirements and any other applicable provisions of the TWBR.

4. COMMENT: One commenter writes to highlight their concerns with numerous provisions of the TWBR. The commenter states that the TWBR contains "ambiguities that present numerous potential hurdles and uncertainties for staffing agencies as well as their third-party clients." The commenter then lists five areas of particular concern. First, the commenter discusses section 7.b's pay equity requirement and argues that the TWBR and the proposed regulations leave many questions unanswered. Second, the commenter addresses section 7.a's cap on the placement fee a temporary help service firm may charge to its third-party clients when a 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. Third, the commenter discusses the practical implications of section 7.d's joint and several liability provision. Fourth, the commenter argues that the TWBR will have an overall negative impact on clients and the economy because it "limits the flexibility opportunities that temporary staffing, in general, offers to both temporary laborers and clients" and due to the TWBR's pay equity mandate. Lastly, the commenter argues that the concerns they listed and "other concerns not addressed" will leave staffing agencies at a disadvantage in achieving compliance with the TWBR, which will translate into tangible losses of revenue, business opportunities, and employment positions.

RESPONSE: All of the concerns raised by the commenter are based on provisions in section 7 of the TWBR or on policy disagreements with the statute itself. Section 7 of the TWBR is not within the Division's purview. The Department of Labor and Workforce Development (Department) is charged with enforcing section 7 of the TWBR. The Department proposed new rules at N.J.A.C. 12:72 to implement sections 1 through 7, and section 10 of the TWBR. All comments and concerns regarding the

above cited sections and their implementation should be directed to the Department.

**Federal Standards Statement**

A Federal standards analysis is not required because there are no Federal laws or standards applicable to the adopted new rules.

**Full text** of the adopted new rules follows:

SUBCHAPTER 12A. TEMPORARY HELP SERVICE FIRMS THAT MAKE DESIGNATED CLASSIFICATION PLACEMENTS

13:45B-12A.1 Certification required

(a) Any person or entity that meets the definition of temporary help service firm and that makes designated classification placements as those terms are defined in section 2 at P.L. 2023, c. 10 (N.J.S.A. 34:8D-2), and that is located, operates, or transacts business in this State shall not make any designated classification placements in this State, unless the person or entity is certified by the Director of the Division of Consumer Affairs to do so in accordance with this subchapter.

(b) Any person or entity that meets the definition of temporary help service firm and that makes designated classification placements as those terms are defined in section 2 at P.L. 2023, c. 10 (N.J.S.A. 34:8D-2), shall obtain a certification pursuant to this subchapter and otherwise comply with the provisions of section 8 at P.L. 2023, c. 10 (N.J.S.A. 34:8D-8), regardless of whether the person or entity is licensed or registered as one or more of the entities identified in section 1 at P.L. 1989, c. 331 (N.J.S.A. 34:8-43).

(c) Any person or entity that meets the definition of temporary help service firm and that makes designated classification placements as those terms are defined in section 2 at P.L. 2023, c. 10 (N.J.S.A. 34:8D-2), shall be subject to the provisions of section 12 at P.L. 2023, c. 10 (N.J.S.A. 34:8D-12).

13:45B-12A.2 Fees

(a) The Division shall charge the following non-refundable temporary help service certification fees:

- 1. Annual certification, primary location ..... \$ 250.00;
- 2. Annual certification, secondary location ..... \$ 250.00;

3. Late fee  
.....  
..... \$ 25.00 (for each 30-day period or portion thereof that the  
application is late).

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