SENATE, No. 4047

STATE OF NEW JERSEY

221st LEGISLATURE

INTRODUCED JANUARY 14, 2025

Sponsored by:
Senator PAUL A. SARLO
District 36 (Bergen and Passaic)
Senator MICHAEL L. TESTA, JR.
District 1 (Atlantic, Cape May and Cumberland)

SYNOPSIS

Establishes “Business Growth Protection Act”; revises law concerning temporary help service firms and temporary laborers.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 5/19/2025)

AN ACT concerning temporary help service firms and temporary laborers and amending P.L.2023, c.10.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 2 of P.L.2023, c.10 (C.34:8D-2) is amended to read as follows:

2. As used in P.L.2023, c.10 (C.34:8D-1 et al.):

"Commissioner" means Commissioner of Labor and Workforce Development, or a designee of the commissioner.

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

(1) "temporary laborer," as that term is used and defined in P.L.2023, c.10 (C.34:8D-1 et al.); and

(2) "third party client," as that term is used and defined in P.L.2023, c.10 (C.34:8D-1 et al.).

"Director" means Director of the Division of Consumer Affairs in the Department of Law and Public Safety, or a designee of the Director.

"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 P.L.2023, c.10 (C.34:8D-1 et al.) 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: 33-90000 Other Protective Service Workers; 35-0000 Food Preparation and Serving Related Occupations; 37-0000 Building and Grounds Cleaning and

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Maintenance Occupations; 39-0000 Personal Care and Service Occupations; 47-2060 Construction Laborers; 47-30000 Helpers, Construction Trades; 49-0000 Installation, Maintenance, and Repair Occupations; 51-0000 Production Occupations; 53-0000 Transportation and Material Moving Occupations; or any successor categories as the Bureau of Labor Statistics may designate.

"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.

"Temporary laborer" means a person who contracts for employment in a designated classification placement with a temporary help service firm <u>to perform work in New Jersey</u>. 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. s.1801 et seq., P.L.1971, c.192 (C.34:8A-7 et seq.), or P.L.1945, c.71 (C.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 customers' 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 P.L.1960, c.39 (C.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 <u>to perform work in New Jersey</u>. 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.

(cf: P.L.2023, c.10, s.2)

2. Section 4 of P.L.2023, c.10 (C.34:8D-4) is amended to read as follows:

4. a. Whenever a temporary help service firm sends one or more persons to work as temporary laborers in designated classification placements, the temporary help service firm shall keep the following records relating to that transaction:

(1) the name, address, and telephone number of the third party client, including each worksite, to which temporary laborers were

sent by the temporary help service firm and the date of the transaction;

(2) for each temporary laborer: the name and address, the specific location sent to work, the type of work performed, the number of hours worked, the hourly rate of pay, and the date sent. The third party client shall be required to remit all information required under this paragraph to the temporary help service firm no later than seven days following the last day of the work week worked by the temporary laborer;

(3) the name and title of the individual or individuals at each third party client's place of business responsible for the transaction;

(4) any specific qualifications or attributes of a temporary laborer, requested by each third party client;

(5) copies of all contracts, if any, with the third party client and copies of all invoices for the third party client;

(6) copies of all employment notices provided in accordance with subsection a. of section 3 of P.L.2023, c.10 (C.34:8D-3);

(7) the amounts of any deductions to be made from each temporary laborer's compensation by either the third party client or by the temporary help service firm for the temporary laborer's food, equipment, withheld income tax, withheld contributions to the State unemployment compensation trust fund and the State disability benefits trust fund withheld Social Security deductions, and every other deduction;

(8) verification of the actual cost of any equipment or meal charged to a temporary laborer; and

(9) any additional information required by the commissioner.

b. The temporary help service firm shall maintain all records under this section for a period of six years from their creation. The records shall be open to inspection by the commissioner during normal business hours. Records described in paragraphs (1), (2), (3), (6), (7), and (8) of subsection a. of this section shall be available for review and copying by that temporary laborer at no cost or an authorized representative of the temporary laborer during normal business hours within five days following a written request. For purposes of this subsection, an authorized representative of the temporary laborer is a person as to whom the temporary laborer has presented to the temporary help service firm an authorization signed by the temporary laborer that expressly permits the person to review and copy the subject records.

In addition, a temporary help service firm that makes designated classification placements shall make records related to the number of hours billed to a third party client for that individual temporary laborer's hours of work available for review or copying, at no cost, during normal business hours within five days following a written request. The temporary help service firm shall make forms, in duplicate, for those requests available at no cost to temporary laborers at the dispatch office. The temporary laborer shall be

given a copy of the request form. It shall be a violation of this section to make any false, inaccurate, or incomplete entry into, or to delete required information from, any record required by this section.

c. (1) Failure by the third party client to maintain and remit accurate time records to the temporary help service firm as provided in paragraph (2) of subsection a. of this section shall constitute a violation by a third party client under section 11 of P.L.2023, c.10 (C.34:8D-11), unless the third party client has been precluded from submitting those time records for reasons beyond its control. A third party client that violates paragraph (2) of subsection a. of this section shall be subject to a civil penalty not to exceed $500 for each violation found by the commissioner. The penalty shall be collected in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

(2) A failure by the third party client to provide time records in accordance with subsection b. of this section shall not be a violation and shall not be the basis for a suit or other action under section 11 of P.L.2023, c.10 (C.34:8D-11), against the temporary help service firm.

(3) Failure of a third party client to remit any information required by this section to a temporary help service firm shall not be a defense to the temporary help service firm recordkeeping requirements of this section.

d. Nothing in subsection a. of this section shall require:

(1) a temporary help service firm to disclose to a third party client the hourly wage rate that the firm pays its temporary laborers; or

(2) a third party client to maintain that information or remit it to the temporary help service firm.

(cf: P.L.2023, c.10, s.4)

3. Section 6 of P.L.2023, c.10 (C.34:8D-6) is amended to read as follows:

6. a. At the time of payment of wages, a temporary help service firm shall provide each temporary laborer in a designated classification placement with a detailed itemized statement, on the temporary laborer's paycheck stub or on a form approved by the commissioner, listing the following:

(1) the name, address, and telephone number of each third party client at which the temporary laborer worked. If this information is provided on the temporary laborer's paycheck stub, a code for each third party client may be used so long as the required information for each coded third party client is made available to the temporary laborer;

(2) the number of hours worked by the temporary laborer at each third party client each day during the pay period or, alternatively, the total number of hours worked in the pay period. If the

temporary laborer is assigned to work at the same work site of the same third party client for multiple days in the same work week, the temporary help service firm may record a summary of hours worked at that third party client's worksite so long as the first and last day of that work week are identified as well;

(3) the rate of payment for each hour worked, including any premium rate or bonus. Overtime pay shall be paid in accordance with the provisions of subsection b. of section 5 of P.L.1966, c.113 (C.34:11-56a4);

(4) the total pay period earnings;

(5) the amount of each deduction made from the temporary laborer's compensation 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; the current maximum amount of a placement fee which the temporary help service firm may charge to a third party client to directly hire the temporary laborer pursuant to subsection a. of section 7 of P.L.2023, c.10 (C.34:8D-7); and

(6) any additional information required by the commissioner.

For each temporary laborer in a designated classification placement who is contracted to work a single day, the third party client shall, at the end of the work day, provide such temporary laborer with a work verification form, approved by the commissioner, which shall contain the date, the temporary laborer's name, the work location, and the hours worked on that day. Any third party client who violates this section shall be subject to a civil penalty not to exceed $500 for each violation found by the commissioner. The maximum civil penalty shall increase to $2,500 for a second or subsequent violation. Each violation of paragraph 1 of this subsection for each temporary laborer and for each day the violation continues shall constitute a separate and distinct violation. That penalty shall be collected by the commissioner in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

b. A third party client shall not withhold or divert the wages of a temporary laborer in a designated classification placement for any reason. Except as otherwise authorized pursuant to this section, a temporary help service firm shall not withhold or divert the wages of a temporary laborer in a designated classification placement for any reason. A temporary help service firm shall provide each temporary laborer with an annual earnings summary within a reasonable time after the preceding calendar year, but in no case later than February 1 of each year. A temporary help service firm shall, at the time of each wage payment, give notice to temporary laborers in a designated classification placement of the availability

of the annual earnings summary or post such a notice in a conspicuous place in the public reception area.

c. At the request of a temporary laborer in a designated classification placement, a temporary help service firm shall hold the daily wages of the temporary laborer and make bi-weekly payments. The wages shall be paid in a single check, or, at the temporary laborer's sole option, by direct deposit or other manner approved by the commissioner, representing the wages earned during the period in accordance with P.L.1965, c.173 (C.34:11-4.1 et seq.).

Vouchers or any other method of payment which are not negotiable shall be prohibited as a method of payment of wages. Temporary help service firms that make daily wage payments shall provide written notification to all temporary laborers in a designated classification placement of the right to request bi-weekly checks. The temporary help service firm may provide this notice by conspicuously posting the notice at the location where the wages are received by the temporary laborers.

d. No temporary help service firm shall charge any temporary laborer in a designated classification placement for cashing a check issued by the temporary help service firm for wages earned by a temporary laborer who performed work through that temporary help service firm. No temporary help service firm or third party client shall charge any temporary laborer in a designated classification placement for the expense of conducting any consumer report, as that term is defined in the "Fair Credit Reporting Act," (15 U.S.C. s.1681 et seq.), any criminal background check of any kind, or any drug test of any kind.

e. Temporary laborers in a designated classification placement shall be paid no less than the wage rate stated in the notice as provided in section 3 of P.L.2023, c.10 (C.34:8D-3), for all the work performed on behalf of the third party client in addition to the work listed in the written description.

f. (1) The total amount deducted for meals and equipment shall not cause the hourly wage of a temporary laborer in a designated classification placement to fall below the State or federal minimum wage, whichever is greater.

(2) A temporary help service firm may deduct the actual market value of reusable equipment provided to a temporary laborer in a designated classification placement by the temporary help service firm which the temporary laborer fails to return, if the temporary laborer provides a written authorization for that deduction at the time the deduction is made. For any additional equipment, clothing, accessories, or other items which are not required by the nature of the work, either by law, custom, or as a requirement of the third party client that a temporary help service firm makes available to temporary laborers in designated classification placements for

purchase, the temporary help service firm shall charge no more than actual market value.

(3) A temporary help service firm shall not charge a temporary laborer in a designated classification placement for any meal not consumed by the temporary laborer and, if consumed, no more than the actual cost of a meal. The purchase of a meal shall not be a condition of employment for a temporary laborer in a designated classification placement.

g. A temporary laborer who is contracted by a temporary help service firm to work at a third party client's worksite in a designated classification placement but who is not utilized by the third party client, shall be paid by the temporary help service firm for a minimum of four hours of pay at the agreed upon rate of pay. However, in the event the temporary help service firm contracts the temporary laborer to work at another location during the same shift, the temporary laborer shall be paid by the temporary help service firm for a minimum of two hours of pay at the agreed upon rate of pay.

h. A third party client is required to reimburse a temporary help service firm wages and related payroll taxes for services performed for a third party client by a temporary laborer in a designated classification placement according to payment terms outlined on invoices, service agreements, or stated terms provided by the temporary help service firm. A third party client who fails to comply with this subsection is subject to the penalties provided in section 11 of P.L.2023, c.10 (C.34:8D-11).

The commissioner shall review a complaint filed by a temporary help service firm that makes designated classification placements against a third party client. The commissioner 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 of P.L.2023, c.10 (C.34:8D-1 et al.) is alleged to have occurred to determine if wages and payroll taxes have been paid to the temporary help service firm and that the temporary laborer has been paid the wages owed.

i. Any temporary help service firm that violates this section shall be subject to a civil penalty not to exceed $500 for each violation found by the commissioner. That penalty shall be collected by the commissioner in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

(cf: P.L.2023, c.10, s.6)

4. Section 7 of P.L.2023, c.10 (C.34:8D-7) is amended to read as follows:

7. a. (1) No temporary help service firm shall restrict the right of a temporary laborer in a designated classification placement to accept a permanent position with a third party client to whom the

temporary laborer has been referred for work, restrict the right of a third party client to offer employment to a temporary laborer, or restrict the right of a temporary laborer to accept a permanent position for any other employment. A temporary help service firm may charge a placement fee to a third party client for employing a temporary laborer in a designated classification placement for whom a contract for work was effected by the temporary help service firm not to exceed the equivalent of the total **[**daily**]** hourly commission rate the temporary help service firm would have received **[**over**]** based on hours worked in a 60-day period, reduced by the equivalent of the **[**daily**]** hourly commission rate the temporary help service firm would have received for each day the temporary laborer has performed work for the temporary help service firm in the preceding 12 months. "Hourly commission rate" means the amount charged to the third party client by the temporary help service firm for services performed by a temporary laborer assigned to the third party client, less the temporary laborer's current hourly pay rate for the services performed. The total hourly commission rate chargeable to the third party client as a placement fee is determined by multiplying the "hourly commission rate" by the result obtained by subtracting the number of hours worked by the temporary laborer for the temporary help service firm in the immediately preceding 12 months from 480 (60 x 8 hours).

(2) Any temporary help service firm which charges a placement fee to a third party client for employing a temporary laborer in a designated classification placement shall include on the wage payment and notice form of each affected temporary laborer the maximum amount of a fee that shall be charged to a third party client by the temporary help service firm**[**, and the total amount of actual charges to the third party client for the temporary laborer during each pay period compared to the total compensation cost for the temporary laborer, including costs of any benefits provided. Failure to provide the required information shall constitute a separate violation for each day the temporary help service firm fails to provide the required information**]**. No fee provided for under this section shall be assessed or collected by the temporary help service firm when a temporary laborer in a designated classification placement is offered permanent work following the suspension, revocation, or non-renewal of the temporary help service firm's certification by the director.

b. **[**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. Each violation of this subsection for each affected temporary laborer shall constitute a separate violation under section 11 of P.L.2023, c.10 (C.34:8D-11).**]** Any temporary laborer assigned to work at a third party client in a designated classification placement shall not be paid less than the hourly rate of pay at the third party client location, which shall be defined as the third party client's current entry level pay rate for new employees with the minimum qualifications to be hired for the position. The third party client shall provide this information to the temporary help service firm upon request and shall update this information with the temporary help service firm at least on an annual basis. Each violation of this subsection for each affected temporary laborer shall constitute a separate violation under section 11 of P.L.2023, c.10 (C.34:8D-11).

c. Any temporary help service firm that violates this section shall be subject to a civil penalty not to exceed $5,000 for each violation found by the commissioner. That penalty shall be collected by the commissioner in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

d. If a third party client leases or contracts with a temporary help service firm for the services of a temporary laborer in a designated classification requirement, the third party client shall be, with the temporary help service firm, jointly and severally responsible for any violation of this section, including with respect to relief provided by section 11 of P.L.2023, c.10 (C.34:8D-11) and civil penalties found by the commissioner.

(cf: P.L.2023, c.10, s.7)

5. Section 8 of P.L.2023, c.10 (C.34:8D-8) is amended to read as follows:

8. a. A temporary help service firm which is located, operates, or transacts business within this State shall not make any designated classification placements unless it is certified by the director to do so, in accordance with rules adopted by the director and shall be subject to P.L.2023, c.10 (C.34:8D-1 et al.). Each temporary help service firm seeking certification to make designated classification placements shall provide proof of an employer account number issued by the commissioner for the payment of unemployment insurance contributions as required under the "unemployment compensation law," R.S.43:21-1 et seq.; proof of valid workers' compensation insurance in effect at the time of certification covering all of its employees; on a form created by the director, 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; and such other information as the director may require pursuant to rules adopted under this section. If, at any time, the workers' compensation insurance coverage for a temporary help service firm that makes designated classification placements lapses, the temporary help service firm shall have an affirmative duty to report the lapse of coverage to the director and the temporary help service firm's certification shall be suspended until the firm's workers' compensation insurance is reinstated. A temporary help service firm shall inform the director of any change or addition to the information required under this subsection within 30 days of the change or addition.

The director shall assess each temporary help service firm seeking certification to make designated classification placements a non-refundable certification fee not exceeding $2,000 per year per temporary help service firm and a non-refundable fee not to exceed $750 per year 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. The fee shall be paid by check or money order, and the director may not refuse to accept a check on the basis that it is not a certified check or a cashier's check. The director may charge an additional fee to be paid by a temporary help service firm that makes designated classification placements if the firm, or any person on the firm's behalf, issues or delivers a check to the director that is not honored by the financial institution upon which it is drawn. The director shall adopt rules for violation hearings and penalties for violations of P.L.2023, c.10 (C.34:8D-1 et al.). The director shall give the commissioner access to any information that the director receives pursuant to this section.

b. It is a violation of P.L.2023, c.10 (C.34:8D-1 et al.) to operate a temporary help service firm that makes designated classification placements without being certified by the director in accordance with subsection a. of this section. The Division of Consumer Affairs in the Department of Law and Public Safety shall create and maintain on its Internet website, accessible to the public:

(1) a list of all certified temporary help service firms in the State that make designated classification placements whose certification is in good standing;

(2) a list of temporary help service firms in the State that make designated classification placements whose certification has been suspended, including the reason for the suspension, the date that the suspension was initiated, and the date, if known, that the suspension is to be lifted; and

(3) a list of temporary help service firms in the State that make designated classification placements whose certification has been revoked, including the reason for the revocation and the date that the certification was revoked.

The director shall assess a penalty against any temporary help service firm that makes designated classification placements and that fails to obtain a certification from the director in accordance with P.L.2023, c.10 (C.34:8D-1 et al.) or any rules adopted under P.L.2023, c.10 (C.34:8D-1 et al.) of $5,000 for each violation. Each day during which a person operates as a temporary help service firm that makes designated classification placements without being certified as a temporary help service firm with the director pursuant to this section shall be a separate and distinct violation of P.L.2023, c.10 (C.34:8D-1 et al.). That penalty shall be collected by the director in a summary proceeding in accordance with the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

A temporary help service firm that makes designated classification placements shall obtain a surety bond issued by a surety company admitted to do business in this State. The principal sum of the bond shall ⟦not⟧ be ⟦less⟧ <u>the greater of $50,000 or one percent of the temporary help service firm's previous 12 months' total gross revenue from all services, but no greater</u> than $200,000. A copy of the bond shall be filed with the director.

The bond required by this section shall be in favor of, and payable to, the people of the State of New Jersey, and shall be for the benefit of any temporary laborer damaged by the temporary help service firm's failure to pay wages, interest on wages, or fringe benefits, or damaged by violation of this section.

Thirty days prior to the cancellation or termination of any surety bond required by this section, the surety shall send written notice to both the temporary help service firm and the director identifying the bond and the date of the cancellation or termination.

A temporary help service firm that makes designated classification placements shall not conduct any business until it obtains a new surety bond and files a copy of it with the director.

This subsection shall not apply to a temporary help service firm whose temporary laborers are covered by a valid collective bargaining agreement, if the agreement expressly provides for:

(1) Wages;

(2) Hours of work;

(3) Working conditions;

(4) An expeditious process to resolve disputes concerning nonpayment of wages;

(5) Documentation of its current workers' compensation insurance policy in effect for the temporary laborers; and

(6) Compliance with all provisions of this section.

c. The principal executive officer of a temporary help service firm that makes designated classification placements shall certify under oath at the time of certification of the temporary help service firm each year on a form created by the director that:

(1) the signing officer has reviewed the certification form of the temporary help service firm and confirmed the information is true and accurate to the best of the officer's knowledge;

(2) the signing officer has reviewed the recordkeeping practices of the temporary help service firm and confirmed that the recordkeeping practices comply with the requirements of section 4 of P.L.2023, c.10 (C.34:8D-4) to the best of his or her knowledge;

(3) the signing officer has reviewed the temporary help service firm's filing as required by subsection a. of section 8 of P.L.2023, c.10 (C.34:8D-8), related to the placement of temporary laborers in permanent positions with third party clients and has confirmed that those practices comply with the requirements of section 7 of P.L.2023, c.10 (C.34:8D-7) and section 14 of P.L.1981, c.1 (C.56:8-1.1), to the best of the officer's knowledge;

(4) the signing officer has reviewed the temporary help service firm's practices related to the transportation of temporary laborers and has confirmed that those practices comply with the requirements of section 5 of P.L.2023, c.10 (C.34:8D-5) to the best of the officer's knowledge;

(5) the signing officer has reviewed and is responsible for the surety bond posted by the temporary help service firm and its renewals; and

(6) the signing officer:

(a) is responsible for establishing and maintaining internal controls to comply with the recordkeeping requirements; and

(b) has evaluated the effectiveness of the internal controls.

d. An applicant is not eligible to obtain or renew a certification to operate a temporary help service firm that makes designated classification placements under P.L.2023, c.10 (C.34:8D-1 et al.) if the applicant or any of its officers, directors, partners, or managers or any owner having 25 percent or greater beneficial interest:

(1) has been involved, as owner, officer, director, partner, or manager, of a temporary help service firm the registration or certification of which has been revoked or suspended without being reinstated within the five years immediately preceding the filing of the application; or

(2) is under the age of 18.

e. Every temporary help service firm that makes designated classification placements shall post and keep posted at each location, in a position easily accessible to all employees, notices as supplied and required by the commissioner containing a copy or summary of the provisions of P.L.2023, c.10 (C.34:8D-1 et al.), and

a notice which informs the public of a toll-free telephone number operated by the commissioner for temporary laborers in designated classification placements and the public to file wage dispute complaints and other alleged violations by temporary help service firms that make designated classification placements. The notices shall be in English or any other language generally understood in the locale of the temporary help service firm.

f. No temporary help service firm shall be permitted to obtain or renew a certification to make designated classification placements in New Jersey until it has complied with the requirements of this section.

g. Notwithstanding any law, rule, or regulation to the contrary, 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 of P.L.2023, c.10 (C.34:8D-2), shall obtain a certification pursuant to this section and otherwise comply with the provisions of P.L.2023, c.10 (C.34:8D-1 et al.), regardless of whether the person or entity is licensed or registered as one or more of the entities identified in section 1 of P.L.1989, c.331 (C.34:8-43).

h. The requirements of this section shall be in addition to those imposed by any other applicable law, rule, or regulation, including section 14 of P.L.1981, c.1 (C.56:8-1.1) and any rules or regulations promulgated thereunder. A temporary help service firm shall not receive a certification under this section unless it is either registered as a temporary help service firm pursuant to section 14 of P.L.1981, c.1 (C.56:8-1.1) and any rules or regulations promulgated thereunder, or licensed or registered as an entity authorized by any other law, rule, or regulation to provide temporary help services.

(cf: P.L.2023, c.10, s.8)

6. Section 10 of P.L.2023, c.10 (C.34:8D-10) is amended to read as follows:

10. a. It is a violation of P.L.2023, c.10 (C.34:8D-1 et al.) for a temporary help service firm or third party client, or any agent of a temporary help service firm or third party client, to retaliate through discharge or in any other manner against any temporary laborer in a designated classification placement for exercising any rights granted under P.L.2023, c.10 (C.34:8D-1 et al.). The termination or disciplinary action by a temporary help service firm against a temporary laborer in a designated classification placement within 90 days of the person's exercise of rights protected under P.L.2023, c.10 (C.34:8D-1 et al.) shall raise a rebuttable presumption of having done so in retaliation for the exercise of those rights. Such retaliation shall subject a temporary help service firm or third party client, or both, to civil penalties pursuant to P.L.2023, c.10 (C.34:8D-1 et al.) or a private cause of action. <u>For purposes of this</u>

section, the termination of a temporary assignment shall not solely raise a presumption of retaliation.

b. It is a violation of P.L.2023, c.10 (C.34:8D-1 et al.) for a temporary help service firm or third party client to retaliate against a temporary laborer in a designated classification placement for:

(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 P.L.2023, c.10 (C.34:8D-1 et al.) have been violated;

(2) instituting any proceeding under or related to P.L.2023, c.10 (C.34:8D-1 et al.); or

(3) testifying or preparing to testify in an investigation or proceeding under P.L.2023, c.10 (C.34:8D-1 et al.).

c. When the commissioner finds that a temporary help service firm or third party client has violated this section, the commissioner is authorized to assess and collect administrative penalties, up to a maximum of $250 for a first violation and up to a maximum of $500 for each subsequent violation, specified in a schedule of penalties to be promulgated as a rule or regulation by the commissioner in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). When determining the amount of the penalty imposed because of a violation, the commissioner shall consider factors which include the history of previous violations by the employer, the seriousness of the violation, the good faith of the employer and the size of the employer's business. No administrative penalty shall be levied pursuant to this section unless the commissioner provides the alleged violator with notification of the violation and of the amount of the penalty by certified mail and an opportunity to request a hearing before the commissioner or his designee within 15 days following the receipt of the notice. If a hearing is requested, the commissioner shall issue a final order upon such hearing and a finding that a violation has occurred. If no hearing is requested, the notice shall become a final order upon expiration of the 15-day period. Payment of the penalty is due when a final order is issued or when the notice becomes a final order. Any penalty imposed pursuant to this section may be recovered with costs in a summary proceeding commenced by the commissioner pursuant to "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.). Any sum collected as a fine or penalty pursuant to this section shall be applied toward enforcement and administration costs of the Department of Labor and Workforce Development.

(cf: P.L.2023, c.10, s.10)

7. This act shall take effect immediately.

STATEMENT

This bill establishes the "Business Growth Protection Act" and revises the law concerning temporary help service firms and temporary laborers. The bill limits its applicability to temporary laborers working in the State. Under current law, New Jersey residents who are temporary laborers working outside the State are covered, which was causing third party clients in other states to reduce their use of temporary laborers from New Jersey.

The bill changes what information is required to be provided in itemized statements by temporary help service firms to temporary laborers from a daily commission rate to the option of calculating hours worked, for itemized statements and placement fee calculation, based on total hours worked during a weekly or other pay period.

The bill protects proprietary information of temporary help service firms by providing that the firms do not have an obligation to disclose pay rates to third party clients or third party client bill rates to temporary laborers.

The bill revises the law to change the pay equity provision from equal pay and benefits to just equal pay. The bill provides that equal pay means temporary help service firms are required to pay temporary laborers a wage not less than the client's current entry level pay rate for client employees with the minimum qualifications for the position.

The bill revises the surety bond requirement for temporary help service firms. Specifically, the bill reduces the bond requirement from not less than $200,000 to a minimum of $50,000 and a cap of $200,000, depending on the revenue of the temporary help service firm.

The bill changes the rebuttable presumption of retaliation under the law with respect to termination of an assignment. The bill provides that no presumption of retaliation will be raised based solely on the termination of a scheduled temporary assignment.