MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representative Paden

To: Workforce Development; Judiciary A

HOUSE BILL NO. 698

AN ACT TO CREATE THE DAY AND TEMPORARY LABOR SERVICES ACT; TO PROVIDE FOR THE PROTECTION OF THE LABOR AND EMPLOYMENT RIGHTS OF LOW-WAGE DAY OR TEMPORARY LABORERS WHO ARE PARTICULARLY VULNERABLE TO ABUSE OF THEIR LABOR RIGHTS, INCLUDING UNPAID WAGES, FAILURE TO PAY FOR ALL HOURS WORKED, MINIMUM WAGE AND OVERTIME VIOLATIONS, AND UNLAWFUL DEDUCTION FROM PAY FOR MEALS, TRANSPORTATION, EQUIPMENT AND OTHER ITEMS; TO PROVIDE DEFINITIONS FOR CERTAIN TERMS; TO PROVIDE THAT A THIRD-PARTY CLIENT SHALL ONLY USE A DAY OR TEMPORARY LABOR SERVICE AGENCY FOR THE PURPOSE OF TEMPORARILY REPLACING A PERMANENT EMPLOYEE, TEMPORARILY INCREASING WORKLOAD, OR EXECUTING WORK OF AN EXCEPTIONAL NATURE; TO PROVIDE FOR THE MAXIMUM LENGTH OF THE TEMPORARY EMPLOYMENT; TO PROVIDE CERTAIN NOTICE THAT MUST BE GIVEN TO DAY OR TEMPORARY LABORERS; TO PROVIDE THE RECORDS THAT MUST BE KEPT BY A DAY AND TEMPORARY LABOR SERVICE AGENCY; TO PROVIDE THE REGULATIONS REGARDING MEALS, TRANSPORTATION AND EQUIPMENT FOR DAY AND TEMPORARY LABOR SERVICE AGENCY AND THIRD-PARTY CLIENTS; TO PROVIDE FOR CERTAIN NOTICES THAT MUST BE PRINTED ON THE DAY OR TEMPORARY LABORERS' PAYMENT STUB; TO PROVIDE FOR CIVIL AND CRIMINAL PENALTIES WHEN CERTAIN VIOLATIONS OCCUR; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. This act shall be known and may be cited as "The Day and Temporary Labor Services Act."

SECTION 2. The Legislature finds that recent studies and a survey of low-wage day or temporary laborers themselves finds that as a group, they are particularly vulnerable to abuse of their labor rights, including unpaid wages, failure to pay for all hours

worked, minimum wage and overtime violations, and unlawful deduction from pay for meals, transportation, equipment and other items. Current law is inadequate to protect the labor and employment rights of these workers.

SECTION 3. The following words and phrases shall have the meanings as defined in this section unless the context clearly indicates otherwise:

(a) "Day or temporary laborer" means a natural person who contracts for employment with a day and temporary labor service agency.

(b) "Day and temporary labor" means work performed by a day or temporary laborer at a third-party client, the duration of which may be specific or undefined, pursuant to a contract or understanding between the day and temporary labor service agency and the third-party client. "Day and temporary labor" does not include labor or employment of a professional or clerical nature.

(c) "Day and temporary labor service agency" means any person or entity engaged in the business of employing day or temporary laborers to provide services, for a fee, to or for any third-party client pursuant to a contract with the day and temporary labor service agency and the third-party client.

(d) "Department" means the Mississippi Department of Employment Security.

(e) "Third-party client" means any person that contracts with a day and temporary labor service agency for obtaining day or temporary laborers.

(f) "Person" means every natural person, firm, partnership, co-partnership, limited liability company, corporation, association, business trust or other legal entity, or its legal representatives, agents or assigns.

SECTION 4. Reasons for use of day and temporary labor service agency. A third-party client shall only use a day or temporary labor service agency for the purpose of temporarily replacing a permanent employee, temporarily increasing workload or executing work of an exceptional nature.

SECTION 5. Length of temporary employment. A third-party client's maximum duration of employment of a day or temporary laborer shall be limited to a duration of ninety (90) consecutive days. After ninety (90) consecutive days, the employment conditions of temporary workers must directly correspond to those of permanent staff. However, exemptions may exist subject to collective bargaining agreements.

SECTION 6. Employment notice. (1) (a) Whenever a day and temporary labor service agency agrees to send one or more persons to work as day or temporary laborers, the day and temporary labor service agency shall provide to each day or temporary laborer, at the time of dispatch, a statement containing the following items on a form approved by the department:

(i) The name of the day or temporary laborer;

(ii) The name and nature of the work to be performed and the types of equipment, protective clothing and training that are required for the task;

(iii) The wages offered;

(iv) The name and address of the destination of each day or temporary laborer;

(v) Terms of transportation; and

(vi) Whether a meal or equipment, or both, are provided, either by the day and temporary labor service agency or the third-party client, and the cost of the meal and equipment, if any.

(b) If a day or temporary laborer is assigned to the same assignment for more than one (1) day, the day and temporary labor service agency is required to provide the employment notice only on the first day of the assignment and on any day that any of the terms listed on the employment notice are changed.

(c) If the day or temporary laborer is not placed with a third-party client or otherwise contracted to work for that day, the day and temporary labor service agency shall, upon request, provide the day and temporary laborer with a confirmation that the day or temporary laborer sought work, signed by an employee of the day and temporary labor service agency, which shall include the name of the agency, the name and address of the day or temporary

laborer, and the date and the time that the day or temporary laborer receives the confirmation.

(2) No day and temporary labor service agency may send any day or temporary laborer to any place where a strike, a lockout or other labor trouble exists.

(3) The department shall mandate to day and temporary labor service agencies that those agencies use effective interpretation resources to communicate information required in subsections (1) and (2) to day or temporary laborers in Spanish, Vietnamese or any other language that is generally understood in the locale of the day and temporary labor service agency.

SECTION 7. Recordkeeping. (1) Whenever a day and temporary labor service agency sends one or more persons to work as day or temporary laborers, the day and temporary labor service agency shall keep the following records relating to that transaction:

(a) The name, address and telephone number of each third-party client, including each worksite, to which day or temporary laborers were sent by the agency and the date of the transaction;

(b) For each day or 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 (b) to the day and temporary labor service agency no later than seven (7) days

following the last day of the work week worked by the day or temporary laborer. Failure of a third-party client to remit such information to a day and temporary labor service agency shall not be a defense to the recordkeeping requirement of this section;

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

(d) Any specific qualifications or attributes of a day or temporary laborer, requested by each third-party client;

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

(f) Copies of all employment notices provided in accordance with subsection (1) of Section 12;

(g) Deductions to be made from each day or temporary laborer's compensation made by either the third-party client or by the day and temporary labor service agency for the day or temporary laborer's transportation, food, equipment, withheld income tax, withheld social security payments and every other deduction;

(h) Verification of the actual cost of any equipment or meal charged to a day or temporary laborer;

(i) The race and gender of each day or temporary laborer sent by the day and temporary labor service agency, as provided by the day or temporary laborer; and

(j) Any additional information required by rules promulgated by the department.

(2) The day and temporary labor service agency shall maintain all records under this section for a period of five (5) years from their creation. The records shall be open to inspection by the department during normal business hours. Records described in paragraphs (a), (b), (c), (f), (g), and (h) of subsection (1) shall be available for review or copying by that day or temporary laborer during normal business hours within five (5) days following a written request. In addition, a day and temporary labor service agency shall make records related to the number of hours billed to a third-party client for that individual day or temporary laborer's hours of work available for review or copying during normal business hours within five (5) days following a written request. The day and temporary labor service agency shall make forms, in duplicate, for such requests available to day or temporary laborers at the dispatch office. The day or temporary laborer shall be given a copy of the request form. It is a violation of this section to make any false, inaccurate or incomplete entry into any record required by this section, or to delete required information from any such record.

SECTION 8. Meals. A day and temporary labor service agency or a third-party client shall not charge a day or temporary laborer for any meal not consumed by the day and temporary laborer and, if consumed, no more than the actual cost of a meal. In no

case shall the purchase of a meal be a condition of employment for a day or temporary laborer.

SECTION 9. Transportation. (1) A day and temporary labor service agency or a third-party client or a contractor or agent of either shall charge no fee to transport a day or temporary laborer to or from the designated worksite.

(2) A day and temporary labor service agency is responsible for the conduct and performance of any person who transports a day or temporary laborer from the agency to a worksite, unless the transporter is: (a) a public mass transportation system; (b) a common carrier; (c) the day or temporary laborer providing his or her own transportation; or (d) selected exclusively by and at the sole choice of the day or temporary laborer for transportation in a vehicle not owned or operated by the day and temporary labor service agency. If any day and temporary labor service agency provides transportation to a day or temporary laborer or refers a day or temporary laborer as provided in subsection (3), the day and temporary labor service agency may not allow a motor vehicle to be used for the transporting of day or temporary laborers if the agency knows or should know that the motor vehicle used for the transportation of day or temporary laborers is unsafe or not equipped as required by this act or by any rule adopted under this act, unless the vehicle is: (a) the property of a public mass transportation system as defined by statute; (b) the property of a common carrier; (c) the day or temporary laborer's personal

vehicle; or (d) a vehicle of a day or temporary laborer used to carpool other day or temporary laborers and which is selected exclusively by and at the sole choice of the day or temporary laborer for transportation.

(3) A day and temporary labor service agency may not refer a day or temporary laborer to any person for transportation to a worksite unless that person is: (a) a public mass transportation system; or (b) providing the transportation at no fee. Directing the day or temporary laborer to accept a specific car pool as a condition of work shall be considered a referral by the day and temporary labor service agency. Any mention or discussion of the cost of a car pool shall be considered a referral by the agency. Informing a day or temporary laborer of the availability of a car pool driven by another day or temporary laborer shall not be considered a referral by the agency.

(4) Any motor vehicle that is owned or operated by the day and temporary labor service agency or a third-party client, or a contractor or agent of either, or to which a day and temporary labor service agency refers a day or temporary laborer, which is used for the transportation of day or temporary laborers shall have proof of financial responsibility. The driver of the vehicle shall hold a valid license to operate motor vehicles in the correct classification and shall be required to produce the license immediately upon demand by the department, its inspectors or deputies, or any other person authorized to enforce this act.

The department shall forward a violation of this subsection to the appropriate law enforcement authorities or regulatory agencies, whichever is applicable.

(5) No motor vehicle that is owned or operated by the day and temporary labor service agency or a third-party client, or a contractor or agent of either, or to which a day and temporary labor service agency refers a day or temporary laborer, which is used for the transportation of day or temporary laborers may be operated if it does not have a seat and a safety belt for each passenger. The department shall forward a violation of this subsection to the appropriate law enforcement authorities or regulatory agencies, whichever is applicable.

(6) If the day or temporary laborer is provided transportation from the point of application to the worksite by the hiring labor service agency operating pursuant to this act, the day or temporary laborer shall also be provided transportation back to the point of application, unless the day or temporary laborer advises or agrees before leaving for the place of employment to obtain alternative transportation after the work shift is completed.

SECTION 10. Day or temporary laborer equipment. For any safety equipment, clothing, accessories or any other items required by the nature of the work, either by law, custom or as a requirement of the third-party client, the day and temporary labor service agency or the third-party client shall ensure that the day

or temporary laborer has the same opportunities and/or responsibilities for acquiring or receiving such equipment as permanent employees of the third-party client.

SECTION 11. Accommodations. The public areas of day and temporary labor agencies, where all notices are to be posted, are also required to contain adequate seating and access to restrooms and water.

SECTION 12. Wage payment and notice. (1) At the time of payment of wages, a day and temporary labor service agency shall provide each day or temporary laborer with a detailed itemized statement, on the day or temporary laborer's paycheck stub or on a form approved by the department, listing the following:

(a) The name, address and telephone number of each third-party client at which the day or temporary laborer worked. If this information is provided on the day or 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 day or temporary laborer;

(b) The number of hours worked by the day or temporary laborer at each third-party client each day during the pay period. If the day or 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 day and temporary labor service agency 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;

(c) The rate of payment for each hour worked including any premium rate or bonus;

(d) The total pay period earnings;

(e) All deductions made from the day or temporary laborer's compensation made either by the third-party client or by the day and temporary labor service agency, and the purpose for which deductions were made, including for the day or temporary laborer's transportation, food, equipment, withheld income tax, withheld social security payments, and every other deduction; and

(f) Any additional information required by rules issued by the department.

(2) For each day or temporary laborer who is contracted to work a single day, the third-party client shall, at the end of the work day, provide such day or temporary laborer with a Work Verification Form, approved by the department, which shall contain the date, the day or temporary laborer's name, the work location, and the hours worked on that day. Any third-party client who violates this subsection (2) may be subject to a civil penalty not to exceed Five Hundred Dollars ($500.00) for each violation found by the department. Such civil penalty may increase to Two Thousand Five Hundred Dollars ($2,500.00) for a second or subsequent violation. For purposes of this subsection (2), each violation of this subsection (2) for each day or temporary laborer

and for each day the violation continues shall constitute a separate and distinct violation.

(3) A day and temporary labor service agency shall provide each worker an annual earnings summary within a reasonable time after the preceding calendar year, but in no case later than February 1. A day and temporary labor service agency shall, at the time of each wage payment, give notice to day or temporary laborers of the availability of the annual earnings summary or post such a notice in a conspicuous place in the public reception area.

(4) At the request of a day or temporary laborer, a day and temporary labor service agency shall hold the daily wages of the day or temporary laborer and make either weekly, bi-weekly or semi-monthly payments. The wages shall be paid in a single check, or, at the day or temporary laborer's sole option, by direct deposit or other manner approved by the department, representing the wages earned during the period, either weekly, bi-weekly or semi-monthly. Vouchers or any other method of payment which is not generally negotiable (including pre-paid debit cards) shall be prohibited as a method of payment of wages. Day and temporary labor service agencies that make daily wage payments shall provide written notification to all day or temporary laborers of the right to request weekly, bi-weekly or semi-monthly checks. The day and temporary labor service agency may provide this notice by

conspicuously posting the notice at the location where the wages are received by the day or temporary laborers.

(5) No day and temporary labor service agency shall charge any day or temporary laborer for cashing a check issued by the agency for wages earned by a day or temporary laborer who performed work through that agency. No day and temporary labor service agency or third-party client shall charge any day or temporary laborer for the expense of conducting any consumer report, as that term is defined in the Fair Credit Reporting Act, 15 USC 1681a(d), any criminal background check of any kind or any drug test of any kind.

(6) Day or temporary laborers shall be paid no less than the wage rate stated in the notice as provided in Section 12 of this act for all the work performed on behalf of the third-party client in addition to the work listed in the written description.

(7) The total amount deducted for meals, equipment and transportation may not cause a day or temporary laborer's hourly wage to fall below the state or federal minimum wage. However, a day and temporary labor service agency may deduct the actual market value of reusable equipment provided to the day or temporary laborer by the day and temporary labor service agency which the day or temporary laborer fails to return, if the day or temporary laborer provides a written authorization for such deduction at the time the deduction is made.

(8) A day or temporary laborer who is contracted by a day and temporary labor service agency to work at a third-party client's worksite but is not used by the third-party client shall be paid by the day and temporary labor service agency for a minimum of four (4) hours of pay at the agreed upon rate of pay. However, in the event the day and temporary labor service agency contracts the day or temporary laborer to work at another location during the same shift, the day or temporary laborer shall be paid by the day and temporary labor service agency for a minimum of two (2) hours of pay at the agreed upon rate of pay.

(9) A third-party client is required to pay wages and related payroll taxes to a licensed day and temporary labor service agency for services performed by the day or temporary laborer for the third-party client according to payment terms outlined on invoices, service agreements or stated terms provided by the day and temporary labor service agency. The department shall review a complaint filed by a licensed day and temporary labor agency. The department shall review the payroll and accounting records of the day and temporary labor service agency and the third-party client for the period in which the violation of this act is alleged to have occurred to determine if wages and payroll taxes have been paid to the agency and that the day or temporary laborer has been paid the wages owed him or her.

SECTION 13. Permanent placement. A day and temporary labor service shall attempt to place a current temporary laborer into a

permanent position with a client when the client informs the agency of its plan to hire a permanent employee for a position like the positions for which employees are being provided by the agency at the same work location.

SECTION 14. Work restriction. No day and temporary labor service agency shall restrict the right of a day or temporary laborer to accept a permanent position with a third-party client to whom the day or temporary laborer has been referred for work or restrict the right of such third-party client to offer such employment to a day or temporary laborer. A day and temporary labor service agency may charge a placement fee to a third-party client for employing a day or temporary laborer for whom a contract for work was effected by the day and temporary labor service agency not to exceed the equivalent of the total daily commission rate the day and temporary labor service agency would have received over a sixty-day period, reduced by the equivalent of the daily commission rate the day and temporary labor service agency would have received for each day. No fee provided for under this section may be assessed or collected by the day and temporary labor service agency when the day or temporary laborer is offered permanent work following the suspension or revocation of the day and temporary labor service agency's registration by the department.

SECTION 15. Retaliation. (1) **Prohibition.** It is a violation of this act for a day and temporary labor service agency

or third-party client, or any agent of a day and temporary labor service agency or third-party client, to retaliate through discharge or in any other manner against any day or temporary laborer for exercising any rights granted under this act. Such retaliation shall subject a day and temporary labor service agency or third-party client, or both, to civil penalties pursuant to this act or a private cause of action.

(2) **Protected acts from retaliation.** It is a violation of this act for a day and temporary labor service agency or third-party client to retaliate against a day or temporary laborer for:

(a) Making a complaint to a day and temporary labor service agency, 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 this act have been violated;

(b) Causing to be instituted any proceeding under or related to this act; or

(c) Testifying or preparing to testify in an investigation or proceeding under this act.

SECTION 16. Private right of action. (1) A person aggrieved by a violation of this act or any rule adopted under this act by a day and temporary labor service agency or a third-party client may file suit in circuit court, in the county where the alleged offense occurred or where any day or temporary

laborer who is party to the action resides, without regard to exhaustion of any alternative administrative remedies provided in this act. A day and temporary labor service agency aggrieved by a violation of this act or any rule adopted under this act by a third-party client may file suit in circuit court, in the county where the alleged offense occurred or where the day and temporary labor service agency which is party to the action is located.

(2) A day or temporary laborer whose rights have been violated under this act by a day and temporary labor service agency or a third-party client or a day and temporary labor service agency whose rights have been violated under this act by a third-party client is entitled to collect:

(a) In the case of a wage and hour violation, the amount of any wages, salary, employment benefits or other compensation denied or lost to the day or temporary laborer or day and temporary labor service agency by reason of the violation, plus an equal amount in liquidated damages;

(b) In the case of a health and safety or notice violation, compensatory damages and an amount up to Five Hundred Dollars ($500.00) for the violation of each subpart of each section;

(c) In the case of unlawful retaliation, all legal or equitable relief as may be appropriate; and

(d) Attorney's fees and costs.

SECTION 17. **Day and temporary labor service agency; recovery of attorney's fees and costs.** A day and temporary labor service agency may recover attorney's fees and costs in a civil action brought by the day and temporary labor service agency against a third-party client for breach of contract by the third-party client in relation to services provided by the agency to the third-party client if the plaintiff prevails in the lawsuit.

SECTION 18. **Severability.** Should one or more of the provisions of this act be held invalid, such invalidity shall not affect any of the valid provisions hereof.

SECTION 19. This act shall take effect and be in force from and after January 1, 2022.