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CITY ATTORNEYS ASSOCIATION OF LOS ANGELES COUNTY (CAALAC) RETREAT

New Employer Obligations for Temporary Employees Under Assembly Bill 1484

2/23/2024

PRESENTED BY:

T. Oliver Yee

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City Attorneys Association of Los Angeles County (CAALAC) Retreat | February 23, 2024

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Agenda

- Legislative Intent of AB 1484
- Key Points of AB 1484
- Who Qualifies as a Temporary Employee Under AB 1484?
 - Special Types of Temporary Employees
 - Temporary Services Employers and Joint Employer Doctrine
- Duty to Provide Information
- Duty to Add Temporary Employees to Existing Bargaining Units and Bargain
- Bargaining Issues for Represented Temporary Employees
- Disciplinary Appeal and At Will Status
- Strike Planning

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Legislative Intent of AB 1484

The Legislature finds and declares all of the following:

- Local governments have increasingly hired temporary employees to provide public services.
- Temporary employees are disproportionately women and people of color, and the lesser rights of temporary employees exacerbate race and gender inequity in public employment.
- There is a statewide interest in ensuring that temporary employees are protected by state laws providing for fair labor relations and that the increasing use of temporary employees does not undermine public employee labor relations.

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Key Points of AB 1484

- Effective January 1, 2024, adds Government Code section 3507.7 to the Meyers Milias Brown Act (MMBA);
- Only applies to temporary employees of a public employer hired to perform the same or similar type of work performed by permanent employees represented by a recognized employee organization;
- Local government agencies must do the following:
 - Upon request of a recognized employee organization, add temporary employees to the same bargaining unit as permanent employees who perform the same or similar type of work;
 - If temporary employees are added to a bargaining unit in response to a labor organization's request, promptly bargain over wages, hours, and terms and conditions of employment for temporary employees;
 - Provide information listed by statute.

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Who Qualifies As a Temporary Employee?

Temporary Employees Covered by AB 1484 include:

- Temporary employees
- Casual employees
- Seasonal employees
- Periodic employees
- Extra-help employees
- Relief employees
- Limited-term employees
- Per diem employees, and
- Any other public employee not hired for a permanent position.

Temporary Employees NOT Covered:

- Employee employed by a temporary services employer as defined in Section 201.3 of the Labor Code.
- Temporary employees hired pursuant to a written agreement between a public employer and a labor organization that primarily represents employees in the building and construction trades.
- True independent contractors
- Temporary employees who have unrepresented counterparts, or no permanent employee counterpart.

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Special Types of Temporary Employees

- Retired annuitants
- Grant funded positions
- Residents
- Student interns

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Temporary Services Employers and Joint Employer Doctrine

- “Temporary employee” does not include an employee employed by a temporary services employer as defined in Section 201.3 of the Labor Code.
- *However*, PERB can still determine that local government agency is a *joint employer* along with a temporary services employer.
- A joint employer must collectively bargain on any term or condition of employment it has the *right* to control.
- This may be a point of contention with some labor groups once new statute goes into effect.

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Duty to Provide Information

For temporary employees *with represented permanent employee counterparts*, agencies must:

- Provide temporary employees, upon hire, with a copy of their job description, wage rates, eligibility for benefits, anticipated length of employment, and procedures to apply for open, permanent positions;
- Provide same information to the recognized employee organization within five days of hire.
- Provide new employee information required under Government Code section 3558 for such temporary employees; and
- Provide the anticipated end date of employment for each temporary employee, or actual end date if the temporary employee has been released from service since the last list was provided.

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Duty to Add Temporary Employees to Existing Bargaining Unit

- Duty to add temporary employees to bargaining unit applies *only if requested* by recognized employee organization.
- Only applies to temporary employees *hired to perform the same or similar work performed by permanent employees who are represented* by a recognized employee organization.
- AB 1484 requests do not appear to be restricted to window period for unit modification petitions.
- If requested by recognized employee organization, local government agencies must promptly bargain over wages, hours, and terms and conditions of employment for temporary employees.

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Bargaining Issues for Represented Temporary Employees

If temporary employees are added to bargaining unit(s), agencies are likely to receive proposals on the following topics:

- Parity with permanent employees:
 - Salaries (Hourly wages)
 - Special incentive pays
 - Health Benefits
 - Leaves (Sick leave, vacation, holiday time off)
 - Uniforms and equipment
- Disciplinary Due Process
- Grievance rights
- Limits on Contracting out

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Bargaining Issues for Represented Temporary Employees (continued)

- Details and enforcement of assignment hour limit for temporary employees
- Path to permanent employment
 - Promotional points/ Hiring preference (*bill specifies this is within scope*)
 - Eligibility to apply for internal recruitments
- Paid Training time, access to training opportunities
- Service credit for time in temporary employment toward permanent employee benefits (*bill specifies this is within scope*)
 - Vacation
 - Longevity pay
 - Other seniority-driven benefits)
- Deferred compensation
- Periodic review of temporary positions and addition of permanent positions
- Procedures for providing employee contact information

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Disciplinary Appeal and At-Will Status

- Employer must provide temporary employees and labor organizations with anticipated length of employment and procedures to apply for permanent positions.
- Legislation seeks transparency from employers to avoid increased dependency on temporary employment
- Avoiding retaliation under AB 1484
 - Clearly define types of temporary employment with hour limits in personnel rules or MOU; and
 - Adhere to hour limits and anticipated end dates of employment to avoid retaliation claims whereby temporary employee separation occurs at same time as bargaining or other protected union activity

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Strike Planning Issues

- Temporary employees added to a bargaining unit will be bound by a no strike provision; *BUT*
- Temporary employees cannot be relied on as strike replacement workers once employees in bargaining unit go on strike.
- Future strike planning should include coverage of temporary employee work during strike.

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Questions?

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Thank You!

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