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A DEEP DIVE INTO THE NEW JERSEY TEMPORARY WORKERS' BILL OF RIGHTS

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While the United States economy at large struggled to recover from the ill-effects of the Covid-19 pandemic, the temporary help service industry set record highs for revenue in 2021 and 2022, consistent with industry forecasts.[1 Indeed, such growth was predictable, as the US economy had heavily-relied on temporary labor during economic downturn in the past, particularly as seen during the Great Recession.[2 While the economy then struggled to get back to pre-recession levels in the early 2010s, the temporary help service industry grew exponentially, much like as seen during the recent pandemic.[3

The temporary help service industry was certain to act quickly in response to the labor shortage during the pandemic, evidenced by concerted efforts between organizations such as the American Staffing Association and the Retail Industry Leaders Association, of whom would ?join forces? to supply temporary labor to ?fill high-demand roles? as businesses struggled to staff their stores and warehouses.[4 Thus, temporary workers found themselves on the frontlines doing essential work while their employer firms experienced record profits.[5

While they may be called temporary workers, many are better described as ?permatemps,? or workers who work ?temporary? assignments ad infinitum while they ?fulfill[] all the duties of [] permanent employee[s] without the security, benefits, or salary of [] permanent employee[s].?[6 Therefore, much temporary labor in the US is temporary in name only, as by 2021, it was estimated that approximately one-third of all temporary workers in the US were permatemps, working the same ?temporary? assignments for years at a time.[7

Whether they be permatemps or true temporary workers, it cannot be understated just how vital such labor is to the US supply chain, as by 2022, more than three-quarters of Fortune 500 firms and their subsidiaries were utilizing such labor in their operations.[8 As the number of permatemps in virtually all industry sectors has grown in recent years, calls by national temporary worker rights organizations such as Temp Worker Justice for increased legal protection for temporary workers have grown as loud as ever.[9 Per Laura Padin and Maya Pinto of the National Employment Law Project, many countries afford more rights to their temporary workers than the laws of the United States generally do, such as the right to equal pay.[10 Unfortunately, calls for rights such as pay equality or parity for temporary workers have historically fallen on deaf ears as far as US state and federal legislatures go.[11

One state economy that relies particularly heavily on temporary labor is New Jersey.[12 Given that the Port of Newark is among the largest in the United States and is therefore an integral part of the national supply chain, it is perhaps no surprise that New Jersey businesses have been especially reliant on cheap, temporary, logistical labor.[13 New Jersey's economic demand for such labor only grew stronger amidst the labor shortage of the recent pandemic and was seemingly as strong as anywhere in the US.[14 Without such workers, it is plausible that the national supply chain would have broken down during Covid and may even break down today.[15

As one New Jersey temporary worker explained, ?[d]uring [the Covid-19 pandemic], [workers] risked [their] lives to do essential work without adequate protections.?[16 Such is seemingly the sentiment among vast numbers of temporary workers who keeping the national economy afloat amidst the recent pandemic being grossly underpaid and under-protected by state and federal laws for decades prior.[17 Given this dissatisfaction with the status quo, New Jersey temporary workers have been lobbying the state legislature to address such inequality between temporary workers and their permanent counterparts for years.[18 Such inequality and abuse has drawn the attention of the National Employment Law Project, whose members have conducted extensive research into the national temporary help service industry's practices that ?make[] [temporary workers] uniquely susceptible to illegal conduct and abuse.?[19 While Laura Padin and Maya Pinto, authors of the policy brief, suggested comprehensive ?policy solutions that [would purportedly] rein in the temporary staffing industry, provide temporary workers with protections from exploitation, and create a level playing field for temporary workers,? most states have failed to adopt meaningful protections for temporary workers consistent with such suggestions.[20 That was until 2023, when New Jersey Bill A1474, better known as the ?New Jersey Temporary Workers'

Bill of Rights? (the ?Act? or the ?New Jersey Act? throughout this note), became law.[21 [1 Staffing Employment Sees Second Year of Postpandemic Growth, Am. Staffing Assoc. (Mar. 23, 2023), https://americanstaffing.net/posts/2023/03/23/second-year-of-postpandemic-growth/ (the ?[t]otal annual sales for the staffing industry totaled $159.1 billion in 2022, an increase of 10.3% from $144.2 billion in 2021 and a new record high.?); US Staffing Revenue to Grow 16% This Year to Record High: SIA Forecast, Staffing Indus. Analysts (Sept. 8, 2021), https://web.archive.org/web/20211117170844/https://www2.staffingindustry.com/Editorial/Daily-News/US-staffing-revenue-to-grow-16-this-year-to-record-high-SIA-forecast-58974 (predicting that ?all segments of the industry will see double-digit growth this year, in many cases as part of a ?V-shaped' bounce back from declines experienced in 2020.?).

[2 See Michael Grabell, The Expendables: How the Temps Who Power Corporate Giants Are Getting Crushed, ProPublica (June 27, 2013, 8:00 AM), https://www.propublica.org/article/the-expendables-how-the-temps-who-power-corporate-giants-are-getting-crushe.

[3 Id. (?[A]s the economy continue[d] its slow, uneven recovery [from the Great Recession], temp work ? [increased] 10 times faster than private-sector employment as a whole.?).

[4 ASA and RILA Partner to Address Critical Need for U.S. Retail Workers During Covid-19 Pandemic, Am. Staffing Assoc. (Mar. 25, 2020), https://americanstaffing.net/posts/2020/03/25/retail-workers-during-covid-19-pandemic/. The two associations worked together, ?provid[ing] an online, searchable directory to connect RILA member retailers to ASA member staffing agencies.?

[5 Am. Staffing Assoc., supra note 1.

[6 Jeff Johnson, Everything You Need to Know About Permatemping, Lacosta Facility Support Serv. (Sept. 1, 2021), https://www.lacostaservices.com/blog/everything-you-need-to-know-about-permatemping/.

[7 Id. ?Often, permatemps begin in a temporary position with the expectation it will become a permanent job, only to stay in the same position for years with no change.?; see also Laura Padin & Maya Pinto, Lasting Solutions for America's Temporary Workers, Nat'l Emp. L. Project (Aug. 26, 2019), https://www.nelp.org/app/uploads/2019/08/Lasting-Solutions-for-Americas-Temporary-Workers-Brief.pdf. ?Temporary workers can languish in the same position for several months and even years?working side-by-side with permanent employees? without ever being offered a permanent position.?

[8 See Nat'l Emp. L. Project, Ensuring New Jersey Temporary Workers have Good Jobs with Living Wages (2018), https://www.nelp.org/app/uploads/2018/03/NJ-temp-workers-fact-sheet.pdf. ?Seventy-seven percent of Fortune 500 firms now use third-party logistics firms, who may then contract out to an army of smaller firms to move their goods.?

[9 Temp Worker Just. (last visited Mar. 13, 2024), https://www.tempworkerjustice.org/ [http://web.archive.org/web/20240419044225/https://www.tempworkerjustice.org/. (Temp Worker Justice is a temporary worker advocacy group based in Washington, D.C.).

[10 As of 2019, the following countries ?[r]equir[e] wage parity and equal benefits for temporary workers and permanent employees: Argentina, Austria, Belgium, Brazil, China, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, India, Indonesia, Ireland, Italy, Latvia, Luxembourg, Mexico, the Netherlands (with some exceptions), Norway, Poland, Portugal, Russia, Slovakia, Slovenia, Spain, South Korea, Sweden, and the United Kingdom (after a 12-week period).? Padin & Pinto, supra note 7, at 7.

[11 Nat'l Emp. L. Project, Temp Workers Demand Good Jobs: Survey reveals poverty pay, permatemping, deceptive recruitment practices, and other job quality issues (2022), https://www.nelp.org/wp-content/uploads/Temp-Workers-Demand-Good-Jobs-Report-2022.pdf. [12 By 2022, it was estimated that ?[t]here [we]re more than 127,000 people in New Jersey employed by temporary staffing agencies.? Eric Kiefer, NJ 'Temp Worker

Bill of Rights' Would Protect 127,000 Employees, Patch (June 30, 2022), https://patch.com/new-jersey/montclair/nj-temp-worker-bill-rights-would-protect-127-000-employees.

[13 Nat'l Emp. L. Project, supra note 8, at 1. ?Because the Port of Newark is the second-largest port in the country, temp and staffing agencies large and small have grown up all [of New Jersey], often in low-income communities of color. Two New Jersey counties appear on a 2012 list of top ten U.S. counties with the highest concentration of temporary help service workers . . . [and] [o]ut of 142 distinct logistics facilities captured in a New Jersey survey, over half had workers employed through staffing agencies working at their sites. On average, agency workers made up more than half of the total workforce (61.4%) at these sites. Three-quarters were dispatched to the same employer every day.?

[14 Kiefer, supra note 12. ?'During the pandemic, New Jersey's temporary workers in logistics and manufacturing plants kept our economy going, making and packaging the products that allowed many of us to stay at home,' said Laura Padin, Director of Work Structures, National Employment Law Project.?

[15 Kiefer, supra note 12.?Many [temporary workers] are crucial to maintaining the supply chain up and down the Interstate 95 corridor, working in warehouses to unpack shipped goods and repackage them for consumers.?

[16] Kiefer, supra note 12.

[17 Kiefer, supra note 12.

[18 Kiefer, supra note 12. ?'For too many years, temp workers like me have been subject to wage theft, abuse and exploitation,' said Rodriguez, a member of Make The Road NJ, one of the groups supporting the proposed law,? and ?'That's why [temporary workers] have been fighting for years for the Temp Workers' Bill of Rights.'?

[19 Padin & Pinto, supra note 7, at 1.

[20 Padin & Pinto, supra note 7, at 1.

[21] Governor Murphy Signs "Temporary Workers' Bill of Rights" into Law, Official Site State New Jersey (Feb. 6, 2023), https://www.nj.gov/governor/news/news/562023/20230206b.shtml.

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