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# HOUSE BILL No. 1318

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-5-6.

**Synopsis:** Temporary employees in the construction trades. Requires a temporary employment agency employing temporary help employees in the construction trades to provide to the employees, upon request, a copy of the contractual agreement between the temporary employment agency and the client company, and to include a written notification with each wage payment of the hourly rate paid for the temporary help employee to the temporary employment agency by the client company and an itemized list of benefits provided by the temporary employment agency. Prohibits a temporary employment agency under certain circumstances from charging a liquidity fee against a temporary help employee in the construction trades or against the client company if the temporary employee is hired by the client company. Requires a temporary employment agency to offer pay and benefits to its employees that are equal to those provided the permanent employees of the client company where the temporary help employees work, under certain circumstances. Requires a client company to hire a temporary help employee in the construction trades, upon application, who has worked for the client company for at least three months, and prohibits the client company from classifying the employee as an independent contractor in the construction trades. Provides that a temporary help employee may bring a civil action against a temporary help agency or a client company for violations of these provisions. Provides that the department of labor may assess a fine of not more than \$5,000 for a violation of this chapter.

**Effective:** July 1, 2000.

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January 11, 2000, read first time and referred to Committee on Labor and Employment.

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Second Regular Session 111th General Assembly (2000)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1999 General Assembly.

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# HOUSE BILL No. 1318



A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 22-5-6 IS ADDED TO THE INDIANA CODE AS  
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2000]:

4 **Chapter 6. Temporary Employee Protection for Employees in**  
5 **the Construction Industry**

6 **Sec. 1. As used in this chapter, "benefits" means any of the**  
7 **following:**

- 8 (1) **Accrual of seniority.**
- 9 (2) **Credit for length of service.**
- 10 (3) **Disability and health insurance.**
- 11 (4) **Holiday pay or time off.**
- 12 (5) **Pension entitlement accrual.**
- 13 (6) **Sick leave.**
- 14 (7) **Vacation leave or pay.**

15 **Benefits are compensation provided in addition to wages.**

16 **Sec. 2. As used in this chapter, "client company" means a**  
17 **business that leases the services of employees or receives services**



1 or functions through temporary employment agencies.

2 **Sec. 3.** As used in this chapter, "construction trades" means any  
3 trade or occupation involving construction, alteration, remodeling,  
4 repairing, wrecking or demolition, addition to, or improvement of  
5 any building, highway, road, railroad, dam, bridge, structure, or  
6 excavation.

7 **Sec. 4.** As used in this chapter, "department" refers to the  
8 department of labor.

9 **Sec. 5.** As used in this chapter, "independent contractor in the  
10 construction trades" refers to a person described in  
11 IC 22-3-6-1(b)(7).

12 **Sec. 6.** As used in this chapter, "liquidity fee" means a penalty  
13 charged by a temporary employment agency against:

- 14 (1) a temporary help employee for accepting a position of  
15 employment with the client company; or  
16 (2) a client company for hiring a temporary help employee.

17 **Sec. 7.** As used in this chapter, "substantially equivalent work"  
18 means work on jobs:

- 19 (1) the performance of which requires equal skill, effort, and  
20 responsibility; and  
21 (2) under similar working conditions.

22 **Sec. 8.** As used in this chapter, "temporary employment agency"  
23 means an employer that for a fee:

- 24 (1) recruits;  
25 (2) procures;  
26 (3) refers;  
27 (4) places; or  
28 (5) employs;

29 workers to perform personal services on a temporary basis to a  
30 third party under the direction and control of the third party.

31 **Sec. 9.** As used in this chapter, "temporary help employee"  
32 means a temporary employment agency employee who, in the  
33 course of employment, performs personal services on a temporary  
34 basis to a third party under the direction and control of the third  
35 party. The term does not include independent contractors in the  
36 construction trades.

37 **Sec. 10.** Upon request by a temporary help employee in the  
38 construction trades, a temporary employment agency shall furnish  
39 the temporary help employee with a copy of any contractual  
40 agreements made between the temporary employment agency and  
41 the client company with respect to the temporary employee's  
42 assignment.



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1           **Sec. 11. All temporary employment agencies employing a**  
 2 **temporary help employee in the construction trades shall include**  
 3 **a written notification with each payment of wages to the temporary**  
 4 **help employee, specifying:**

5           **(1) the hourly rate paid for the temporary help employee to**  
 6 **the temporary employment agency by the client company;**  
 7 **and**

8           **(2) an itemized list of benefits provided to the temporary help**  
 9 **employee by the temporary employment agency.**

10 **The notification may be included on the temporary help employee's**  
 11 **statement of earnings and deductions.**

12           **Sec. 12. Temporary employment agencies are prohibited from**  
 13 **charging a liquidity fee against a:**

14           **(1) temporary help employee in the construction trades if the**  
 15 **temporary help employee accepts a position with the client**  
 16 **company; or**

17           **(2) client company if the temporary help employee in the**  
 18 **construction trades accepts a position with the client**  
 19 **company.**

20           **Sec. 13. Temporary employment agencies shall offer pay and**  
 21 **benefits equal to those provided to the permanent employees of the**  
 22 **client company to temporary help employees in the construction**  
 23 **trades who perform substantially equivalent work compared to**  
 24 **employees of the client company where the temporary help**  
 25 **employees work.**

26           **Sec. 14. A temporary employment agency shall not:**

- 27           **(1) discharge;**  
 28           **(2) discipline; or**  
 29           **(3) penalize in any other manner;**

30 **a temporary help employee in the construction trades because the**  
 31 **temporary help employee, or a person acting on behalf of the**  
 32 **temporary help employee, reports a violation or alleged violation**  
 33 **of section 10, 11, 12, or 13 of this chapter to the temporary**  
 34 **employment agency or to a local or state official, or because the**  
 35 **temporary help employee, or a person acting on behalf of the**  
 36 **temporary help employee, exercises any right under this chapter.**

37           **Sec. 15. A client company in the construction trades may not:**

- 38           **(1) refuse to hire any temporary help employee who has**  
 39 **worked under the direction and control of the client company**  
 40 **for at least three (3) months, if the temporary help employee**  
 41 **applies for employment with the client company; or**  
 42           **(2) classify a temporary help employee, who has worked**

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1 under the direction and control of the client company for at  
 2 least three (3) months, as an independent contractor in the  
 3 construction trades after the temporary help employee applies  
 4 for employment with the client company.

5 **Sec. 16. (a) A temporary help employee in the construction**  
 6 **trades may bring a civil action against a:**

7 (1) temporary employment agency to enforce section 10, 11,  
 8 12, 13, or 14 of this chapter; or

9 (2) client company to enforce section 15 of this chapter;

10 within two (2) years after the alleged violation.

11 (b) If a temporary help agency violates section 10, 11, 12, 13, or  
 12 14 of this chapter, or a client company violates section 15 of this  
 13 chapter, the court may do the following:

14 (1) Award:

15 (A) treble damages for loss of wages and other benefits;  
 16 and

17 (B) court costs and reasonable attorney's fees;  
 18 to the prevailing temporary help employee.

19 (2) Enjoin further violations of this chapter by the temporary  
 20 employment agency.

21 **Sec. 17. (a) The department and its authorized inspectors and**  
 22 **agents shall enforce this chapter. The department and its**  
 23 **inspectors and agents may visit and inspect, at all reasonable hours**  
 24 **and as often as practicable and necessary, all establishments**  
 25 **governed by this chapter.**

26 (b) When requested in writing by the department, the attorney  
 27 general shall assist the department in the enforcement of this  
 28 chapter against all violations.

29 (c) In addition to the civil action that may be brought by the  
 30 temporary help employee under section 16(a) of this chapter, a  
 31 person, firm, limited liability company, or corporation that violates  
 32 this chapter may be assessed a fine of not less than two thousand  
 33 five hundred dollars (\$2,500) and not more than five thousand  
 34 dollars (\$5,000) for each offense by the department. The  
 35 department shall collect the fines and shall disburse the fines as  
 36 reimbursement of wages to those temporary help employees who  
 37 have been found by the department to have been damaged by the  
 38 temporary employment agency's failure to comply with this  
 39 chapter, with any remaining balance deposited in the state general  
 40 fund.

41 (d) A civil penalty assessed under subsection (c):

42 (1) is subject to IC 4-21.5-3-6; and

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1           **(2) becomes effective without a proceeding under IC 4-21.5-3**  
2           **unless a person requests an administrative review not later**  
3           **than thirty (30) days after notice of the assessment is given.**

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