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To: David Fish, Executive Director, Legal and Regulatory Services, Department of Labor & Workforce Development (david.fish@dol.nj.gov)

From: Christopher Emigholz, NJBIA Chief Government Affairs Officer

Date: October 18, 2023

RE: **NJBIA Comments on NJDOLWD Rule Proposal to Implement Temporary Workers' Bill of Rights**

On behalf of our member companies that make NJBIA the largest, most impactful statewide association representing New Jersey businesses, I appreciate the opportunity to submit the following comments regarding the Department of Labor and Workforce Development's (Department) proposed new rules at N.J.A.C 12:72 (rules) in order to implement Sections 1 through 7 of P.L. 2023 c. 10 (N.J.S.A. 34:8D-1 et seq.) commonly referred to as the Temporary Workers' Bill of Rights. These comments are based on input from our NJBIA member companies that are concerned about the proposed rules in a variety of ways. NJBIA opposed this legislation, however, now that it is law, we are focusing our comments on how to best interpret the statutory language so that the rules cause less harm to employers.

Uncertainty of Defining Average Wages and Benefits:

In the rules proposed by the Department, seniority, family size, specific benefit selection for health benefits and client company pay scales are not considered in the average salary and benefits calculations. The statute does not define the word "average" nor the comparable employees that must be the basis for the average, and the proposed regulations fail to help provide clarity for employers by taking advantage of the law's vague language. Failing to include seniority and existing client company pay scales will lead to an imbalance and inequity from temporary workers making more money than more experienced workers or workers with larger benefit costs because of family size. To streamline the process for calculating the cost of benefits, the rules should allow third-party clients to establish a standard baseline amount, especially for the portion of benefits attributable to healthcare. For example, a standard health benefits amount could be based on employee-only coverage rates to avoid single temporary workers with no dependents getting the average benefits of third-party client employees with benefits that cover their large families.

Concern about Sharing Information Between Third-Party Client and Temporary Work Agency:

Third-party client companies are concerned about sharing their wage and benefit information that they believe to be proprietary, and the rules do not adequately offer protection of this information where the statute potentially allows for some. NJBIA proposes that client companies be responsible for calculating their own average wage and benefits and sending that information to temporary worker agencies. If this were done with greater protection of proprietary information, instead of sending the full pay scale information to the temporary worker agencies, the mutually beneficial partnership between temporary worker agencies and their clients would be preserved, maintaining better economic opportunities for both. Additionally on the sharing of information, the wage and benefit information rules require client companies to send to temporary worker agencies goes beyond anything any business

would even need to send to government entities. Allowing the third-party client companies to calculate their own data would allow them to protect their information and also reduce this administrative challenge.

Additionally on the administrative burden, it is unclear how third-party client companies that hire temporary workers throughout the year maintain the average calculations throughout the year. It potentially would be more efficient if the rules would allow third-party clients to calculate these rates for relevant positions on a set schedule, such as two times per year or quarterly.

We hope these comments are helpful to the Department and thank you for taking NJBIA's perspective into consideration. Please feel free to email NJBIA Chief Government Affairs Officer Christopher Emigholz (cemigholz@njbja.org) if you have any questions.