

116TH CONGRESS
2D SESSION

H. R. 7638

To establish certain employment protections for temporary workers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 16, 2020

Mr. KENNEDY (for himself and Mr. CLEAVER) introduced the following bill; which was referred to the Committee on Education and Labor, and in addition to the Committees on House Administration, Oversight and Reform, the Judiciary, Veterans' Affairs, Armed Services, Energy and Commerce, and Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish certain employment protections for temporary workers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Restoring Worker
5 Power Act of 2020”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act, the following definitions apply:

1 (1) CONVERSION FEE.—The term “conversion
2 fee” means a fee charged by a temporary staffing
3 agency to a host employer for hiring or directly em-
4 ploying a temporary worker for whom a contract for
5 work was effected by the temporary agency.

6 (2) HOST EMPLOYER.—The term “host em-
7 ployer” means any person that contracts with a tem-
8 porary staffing agency to obtain temporary workers.

9 (3) NON-COMPETITION AGREEMENT.—The term
10 “non-competition agreement” means an agreement
11 between an employer and an employee or temporary
12 worker or otherwise arising out of an existing or an-
13 ticipated employment relationship under which the
14 employee, temporary worker, or expected employee
15 agrees that he or she will not engage in certain spec-
16 ified activities that are competitive with such em-
17 ployer during employment relationship or after the
18 employment relationship has ended.

19 (4) PREDISPUTE ARBITRATION AGREEMENT.—
20 The term “predispute arbitration agreement” means
21 any agreement to arbitrate a dispute that had not
22 yet arisen at the time of the making of the agree-
23 ment.

24 (5) SAME OR SUBSTANTIALLY SIMILAR WORK.—
25 The term “same or substantially similar work”, used

1 to compare the work of one individual to the work
2 of another individual, means that the work of each
3 individual—

4 (A) requires equivalent skill, effort, respon-
5 sibility, and authority; and

6 (B) is performed in similar conditions.

7 (6) TEMPORARY STAFFING AGENCY.—The term
8 “temporary staffing agency” means any entity en-
9 gaged in supplying temporary workers to perform
10 work, for a fee, for a host employer pursuant to an
11 agreement between the staffing agency and the host
12 employer.

13 (7) TEMPORARY WORK ASSIGNMENT.—The
14 term “temporary work assignment” means work ar-
15 ranged by a temporary staffing agency for the ben-
16 efit of a host employer and performed by a tem-
17 porary worker.

18 (8) TEMPORARY WORKER.—The term “tem-
19 porary worker” means any individual supplied by a
20 temporary staffing agency to perform work for one
21 or more host employers for any amount of time, re-
22 gardless of whether such individual is an employee
23 or independent contractor with respect to such tem-
24 porary staffing agency.

1 **SEC. 3. PROTECTIONS FOR TEMPORARY WORKERS.**

2 (a) NOTICE OF WORK TO BE PERFORMED.—

3 (1) IN GENERAL.—Not less than 48 hours be-
4 fore the date on which such temporary worker be-
5 gins a temporary work assignment for a host em-
6 ployer on behalf of the temporary staffing agency, a
7 temporary staffing agency shall provide notice in,
8 the temporary worker’s primary language, in accord-
9 ance with paragraph (2) to a temporary worker.

10 (2) NOTICE.—Notice under paragraph (1) shall
11 include—

12 (A) a description of the temporary work
13 assignment to be performed by the temporary
14 worker;

15 (B) the work hours and rate of wages for
16 such assignment;

17 (C) the name, worksite address, and con-
18 tact information of the host employer;

19 (D) any requirements unique to the tem-
20 porary work assignment that the temporary
21 worker will have to meet to perform the assign-
22 ment, including required clothing, equipment,
23 training, or licensing;

24 (E) any fees or charges to workers that
25 may be deducted from the pay of such tem-
26 porary worker including for transportation,

1 meals, check cashing, clothing, tools, or safety
2 equipment; and

3 (F) the rate at which the temporary staff-
4 ing agency charges the host employer for the
5 labor or services of such temporary worker.

6 (b) PAYCHECK TRANSPARENCY.—

7 (1) IN GENERAL.—Not later than the date on
8 which a temporary staffing agency pays a temporary
9 worker, the temporary staffing agency shall provide
10 such temporary worker a statement of wages in ac-
11 cordance with paragraph (2).

12 (2) STATEMENT OF WAGES.—A statement of
13 wages under paragraph (1) shall include, with re-
14 spect to the work for which the temporary staffing
15 agency is paying the temporary worker—

16 (A) an itemized statement of wages, in-
17 cluding the wage rate and the number of hours
18 worked for each host employer, and each deduc-
19 tion from such wages and the reason for such
20 deduction; and

21 (B) the hourly rate at which each host em-
22 ployer pays the temporary staffing agency for
23 the labor or services of such temporary worker.

24 (c) DRUG TESTING AND BACKGROUND CHECKS.—A
25 temporary staffing agency may not require a temporary

1 worker to pay for a drug test or background check that
2 is required for the performance of a temporary work as-
3 signment or deduct the cost of such drug test or back-
4 ground check from the pay of such temporary worker and
5 affording the temporary worker the opportunity to decline
6 such assignment.

7 (d) TRAVEL TIME.—A temporary staffing agency
8 shall pay a temporary laborer, with respect to a temporary
9 labor assignment at a wage rate that is equal to the con-
10 tracted hourly wage rate for the temporary labor assign-
11 ment for the time during which the temporary laborer is
12 required to commute between—

13 (1) the temporary staffing agency and the work
14 site of the host employer; and

15 (2) work sites of one or more host employers.

16 (e) RIGHT TO REFUSE STRIKEBREAKING ASSIGN-
17 MENTS.—No temporary staffing agency may assign a tem-
18 porary worker a temporary work assignment with a host
19 employer whose employees are, on the date of assignment,
20 engaged in a strike, a lockout, or other work stoppage of
21 any kind without notifying the temporary worker of this fact
22 and affording the temporary worker the opportunity to de-
23 cline such assignment.

1 (f) LIABILITY.—Any temporary staffing agency who
2 violates this section shall be liable to any temporary work-
3 er for damages equal to the sum of—

4 (1) lost wages of the temporary worker;

5 (2) liquidated damages, equal to the amount
6 that is 2 times the amount described in paragraph
7 (1); and

8 (3) an amount equal to—

9 (A) \$100 for each of the first 10 violations
10 of this section with respect to an temporary
11 worker; and

12 (B) \$250 for each such violation there-
13 after.

14 **SEC. 4. EQUAL PAY FOR EQUAL WORK.**

15 (a) EQUAL PAY.—A temporary staff agency or host
16 employer, whichever is responsible for payment of the tem-
17 porary worker, shall pay the temporary worker at a rate
18 that is not less than the same average starting wage rate
19 of a permanent employee of the host employer who per-
20 forms the same or substantially similar work as the tem-
21 porary worker.

22 (b) PROHIBITION.—No temporary staffing agency or
23 host employer may lower the wage of any individual in
24 order to comply with this section.

1 (c) PENALTY.—Any temporary staffing agency that
 2 violates this section with respect to a temporary worker
 3 shall be liable to such temporary worker for an amount
 4 equal to the sum of—

5 (1) the amount that equal to the difference be-
 6 tween—

7 (A) the amount that such temporary work-
 8 er was entitled to under subsection (a) during
 9 the period with respect to which the violation
 10 occurred; and

11 (B) the amount that such temporary work-
 12 er was paid for such period; and

13 (2)(A) \$100 for the first 10 violations of this
 14 section with respect to such temporary worker; or

15 (B) \$250 for each such violation thereafter.

16 (d) COMMUNICATION REQUIREMENT.—The tem-
 17 porary staffing agency and host employer shall commu-
 18 nicate as necessary in order to implement this section.

19 **SEC. 5. PROHIBITION ON FORCED ARBITRATION.**

20 Notwithstanding any provision of title 9 of the United
 21 States Code, no predispute arbitration agreement shall be
 22 valid or enforceable with respect to an employment dispute
 23 between a temporary worker and a temporary staffing
 24 agency or a host employer.

1 **SEC. 6. SAFETY AND HEALTH PROVISIONS.**

2 (a) TRAINING; DOCUMENTATION; HAZARD ANAL-
3 YSIS.—Not later than 24 hours before the date on which
4 a temporary worker begins a temporary work assignment
5 for a host employer on behalf of a temporary staffing
6 agency, the temporary staffing agency shall provide—

7 (1) to the temporary worker—

8 (A) general safety training and training
9 with respect to the job-specific hazards based
10 upon the job hazards analysis under subpara-
11 graph (B)(ii) if such agency possesses or should
12 possess such expertise;

13 (B) a document, signed by the temporary
14 staffing agency and the host employer, con-
15 taining—

16 (i) description of the safety and health
17 responsibilities of each the temporary staff-
18 ing agency and the host employer, with re-
19 spect to protecting the safety and health of
20 the temporary worker, including—

21 (I) the party responsible for pro-
22 viding and maintaining protective
23 equipment;

24 (II) the process by which the
25 temporary worker should report an in-
26 jury;

1 (III) the party responsible for
2 providing first aid and medical treat-
3 ment to injured workers; and

4 (IV) the name, address, and
5 phone number of the workers' com-
6 pensation insurance carrier that pro-
7 vides coverage to the temporary work-
8 er; and

9 (ii) the results of a job hazard anal-
10 ysis, conducted by the host employer;

11 (2) to the host employer a document containing
12 a description of the training and competencies of the
13 temporary worker that are related to the temporary
14 work assignment.

15 (b) RESPONSIBILITIES OF HOST EMPLOYERS.—Each
16 host employer shall do the following:

17 (1) Not later than 48 hours before a temporary
18 worker begins a temporary work assignment with
19 the host employer, perform a job hazard analysis for
20 each job that the temporary worker may foreseeably
21 perform which shall include a review of—

22 (A) all foreseeable hazards to the tem-
23 porary worker;

24 (B) the safety equipment required to pre-
25 vent injury or illness;

1 (C) the training required to prevent injury
2 or illness; and

3 (D) the results of the job hazard analysis
4 under subsection (b)(1).

5 (2) Not later than 48 hours after a temporary
6 worker begins a temporary work assignment for the
7 host employer, provide the same mandatory training
8 health and safety training to temporary workers as
9 an employee of the host employer performing the
10 same or substantially similar work.

11 (3) Include temporary workers in all health and
12 safety meetings, evaluations, and distributions for
13 information pertaining to health and safety as made
14 available to employees of the employer during the
15 period of the temporary work assignment.

16 (4) Inform the temporary staffing agency of
17 any job-related injuries or illnesses sustained by the
18 temporary worker not later than 24 hours after such
19 injury or illness is made known to the host employer.

20 **SEC. 7. PERMANENT WORK OPPORTUNITIES.**

21 (a) PROHIBITION ON NON-COMPETE AGREE-
22 MENTS.—No temporary staffing agency shall enter into,
23 enforce, or threaten to enforce a non-competition agree-
24 ment for a temporary worker with a temporary worker or

1 any third party that limits the temporary worker's ability
2 to seek other job opportunities.

3 (b) PROHIBITION ON CONVERSION FEES.—No tem-
4 porary staffing agency may charge a conversion fee with
5 respect to a temporary worker if such temporary worker,
6 before being hired by the host employer, worked for such
7 host employer for a period of 60 days or more.

8 **SEC. 8. TEMPORARY STAFFING AGENCY RECORDKEEPING.**

9 (a) IN GENERAL.—Upon assigning a temporary
10 worker to a host employer for a temporary work assign-
11 ment, a temporary staffing agency shall keep the following
12 records relating to such assignment:

13 (1) HOST EMPLOYER INFORMATION.—

14 (A) The name, address, and telephone
15 number of the host employer.

16 (B) The specific location of each worksite
17 to which the temporary workers were sent.

18 (C) The date of the transaction.

19 (D) The name and title of the individual or
20 individuals at each host employer's place of
21 business responsible for the transaction.

22 (E) Any specific qualifications or at-
23 tributes of the temporary worker, requested by
24 the host employer.

1 (F) Any deductions to be made from each
2 temporary worker's compensation made by the
3 temporary staffing agency for the temporary
4 worker's transportation, food, clothing, equip-
5 ment, check cashing, or other service or item

6 (G) Verification of the actual cost of any
7 equipment, transportation or meal charged to a
8 day or temporary worker.

9 (2) ASSIGNMENT INFORMATION.—

10 (A) The race and gender of each tem-
11 porary worker assigned by the temporary staff-
12 ing agency, as provided by the temporary work-
13 er.

14 (B) The type of work to be performed.

15 (C) The number of hours to be billed to
16 the host employer.

17 (D) The number of hours to be worked.

18 (E) The hourly rate to be billed or charged
19 to the host employer.

20 (F) Any specific qualifications or attributes
21 of the temporary worker, requested by the host
22 employer.

23 (G) Copies of all agreements and contracts
24 covering this assignment, if any, between the
25 temporary staffing agency and the host em-

1 ployer, and copies of all invoices sent to the
2 host employer.

3 (H) Copies of all employment notices or
4 advertisements used in connection with this job
5 order or assignment.

6 (I) Any deductions to be made from each
7 temporary worker's compensation made by the
8 temporary staffing agency for the temporary
9 worker's transportation, food, clothing, equip-
10 ment, check cashing, or other service or item.

11 (3) APPLICANT INFORMATION.—

12 (A) Information on all individuals who ap-
13 plied for the assignment, including their race,
14 ethnicity, and gender.

15 (B) Information on when the job was
16 filled.

17 (C) With respect to any temporary worker
18 assigned to the temporary work assignment, the
19 following:

20 (i) The temporary worker's name and
21 address.

22 (ii) The date assigned to work.

23 (iii) The hourly rate to be paid.

24 (iv) The race and gender of each tem-
25 porary worker assigned by the temporary

1 staffing agency, as provided by the tem-
2 porary worker.

3 (v) When, and under what circum-
4 stances termination occurred.

5 (vi) The date on which the temporary
6 work assignment began.

7 (b) REQUIREMENTS.—Each temporary staffing agen-
8 cy shall maintain, and make open for inspection by the
9 Secretary of Labor and the Equal Employment Oppor-
10 tunity Commission, and (after removing personally identi-
11 fiable information) make available for review to temporary
12 worker applicants, all records under this subsection for a
13 period of 3 years beginning on the date on which such
14 records are created.

15 **SEC. 9. AGENCY REGISTRATION.**

16 (a) TEMPORARY STAFFING AGENCY RESPONSIBIL-
17 ITIES.—

18 (1) IN GENERAL.—Each temporary staffing
19 agency and branch office shall register with the Sec-
20 retary of Labor in accordance with the rules adopted
21 by the Secretary for temporary staffing agencies an-
22 nually.

23 (2) REPORTING.—Not less than once every 6
24 months, a temporary staffing agency shall submit a
25 report to the Secretary containing, with respect to

1 temporary workers employed by the temporary staff-
2 ing agency during the reporting period, the following
3 information:

4 (A) The number who are on a temporary
5 work assignment.

6 (B) The percentage who have been injured
7 on a temporary work assignment.

8 (C) The percentage who worked on a tem-
9 porary assignment for not less than 60 days.

10 (D) The percentage who became employees
11 of the host employer after working on a tem-
12 porary work assignment for such host employer.

13 (E) Information regarding any violations
14 of title VII of the Civil Rights Act of 1964 (25
15 U.S.C. 1326 et seq.) by the temporary staffing
16 agency, including information regarding the
17 host employer who made a request for the hire
18 of temporary workers in violation of such title.
19 Such information shall not contain any person-
20 ally identifiable information with respect to an
21 affected temporary worker, including the name,
22 address, or phone number of such temporary
23 workers.

24 (3) PUBLICATION.—The Secretary shall make
25 publicly available on the internet website of the De-

1 partment a list of the temporary staffing agencies
2 that have registered under this section.

3 (4) REGISTRATION FEE.—The Secretary may
4 assess each temporary staffing agency a registration
5 fee not to exceed \$100.

6 (5) TERMINATION OF REGISTRATION.—The
7 Secretary may suspend, deny, or terminate the reg-
8 istration of a temporary staffing agency under this
9 section due to repeated violations of title VII of the
10 Civil Rights Act of 1964 (25 U.S.C. 1326 et seq.)
11 during the hiring or recruiting of temporary work-
12 ers.

13 (b) HOST EMPLOYER RESPONSIBILITIES.—

14 (1) VERIFICATION OF REGISTRATION.—A host
15 employer, upon contracting for a temporary work as-
16 signment with a temporary staffing agency, shall
17 verify that the temporary staffing agency is reg-
18 istered with the Department of Labor before enter-
19 ing into a contract with such temporary staffing
20 agency, and not less than once during each calendar
21 year for which a host employer has a contract with
22 such temporary staffing agency. The host employer
23 may request, and the Secretary shall provide, a list
24 of registered temporary staffing agencies.

25 (2) PENALTY.—

1 (A) HOST EMPLOYER.—A host employer
2 that contracts with a temporary staffing agency
3 that is not registered is subject to a civil pen-
4 alty of not more than the lesser of—

5 (i) \$100 for each business day such
6 host employer is are under contract with
7 an unregistered temporary staffing agency;
8 or

9 (ii) \$5,000.

10 (B) TEMPORARY STAFFING AGENCY.—A
11 temporary staffing agency that violates this sec-
12 tion is subject to a civil penalty of not more
13 than the lesser of—

14 (i) \$100 for each day such agency op-
15 erates without registering under this sec-
16 tion; or

17 (ii) \$5,000.

18 **SEC. 10. PENALTIES AND ENFORCEMENT.**

19 (a) REGULATORY AUTHORITY.—Secretary of Labor
20 is authorized to issue regulations to ensure compliance
21 with this Act.

22 (b) CIVIL PENALTIES.—Any temporary staffing
23 agency or host employer who violates section 6 or 7 shall
24 be imposed a civil fine not to exceed \$1,500 per violation

1 for each week the temporary staffing agency or host em-
2 ployer is in violation.

3 (c) RELIEF.—A temporary worker shall be entitled
4 to wages, salary, employment benefits, or other compensa-
5 tion denied or lost due to a violation of any provision
6 under this Act, or reinstatement if terminated in violation
7 of subsection (g). Days during which such worker would
8 have worked if such had not been wrongfully suspended
9 or terminated in violation of subsection (g) shall count to-
10 wards the numbers of days worked by such temporary
11 worker for the purposes of section 7(b).

12 (d) RIGHT OF ACTION.—An action to recover the
13 damages or equitable relief under this Act may be main-
14 tained against any employer (including a public agency)
15 in any Federal or State court of competent jurisdiction
16 by any one or more temporary workers for and in behalf
17 of—

18 (1) the temporary workers; or

19 (2) the temporary workers and other temporary
20 workers similarly situated.

21 (e) FEES AND COSTS.—The court in such an action
22 shall, in addition to any judgment awarded to the plaintiff,
23 allow a reasonable attorney's fee, reasonable expert wit-
24 ness fees, and other costs of the action to be paid by the
25 defendant.

1 (f) LIMITATIONS.—The right provided by subsection
2 (d) to bring an action by or on behalf of any temporary
3 worker shall terminate on the filing of a complaint by the
4 Secretary in an action under subsection (b) in which a
5 recovery is sought of the damages described in subsection
6 (c) owing to a temporary worker by an employer, unless
7 the action is dismissed without prejudice on motion of the
8 Secretary.

9 (g) RETALIATION FOR CERTAIN CONDUCT.—

10 (1) IN GENERAL.—No temporary staffing agen-
11 cy or host employer may take adverse action against
12 a temporary worker for—

13 (A) making a complaint regarding a viola-
14 tion of any provision under this Act or the
15 amendments made by this Act;

16 (B) causing to be instituted any proceeding
17 under or related to this Act;

18 (C) testifying or preparing to testify in an
19 investigation or proceeding under this Act; or

20 (D) refusing an assignment pursuant to
21 section 3(e).

22 (2) PRESUMPTION.—The termination or ad-
23 verse action by a temporary staffing agency against
24 a temporary worker within 30 days of an individual
25 claiming a protection under this Act or reporting a

1 violation under this section shall create a presump-
2 tion of a violation of the prohibitions in paragraph
3 (1) in any proceeding brought against the temporary
4 staffing agency or host employer under this Act.

5 **SEC. 11. COVID-19 PAID SICK LEAVE.**

6 (a) FAMILY AND MEDICAL LEAVE ACT OF 1993.—
7 Section 110(a)(1)(B) of the Family and Medical Leave
8 Act of 1993 (29 U.S.C. 2620(a)(1)(B)) is amended—

9 (1) by striking “Section 101(4)(A)(i)” and in-
10 serting “(i) Section 101(4)(A)(i)”; and

11 (2) by inserting at the end the following:

12 “(ii) The 500-employee threshold
13 under section 101(4)(A)(i) shall not apply
14 with respect to a temporary staffing agen-
15 cy (as defined in the Restoring Worker
16 Power Act of 2020).”.

17 (b) EMERGENCY PAID SICK LEAVE ACT.—Section
18 5110(2)(B)(i) of the Families First Coronavirus Response
19 Act (29 U.S.C. 2601 note) is amended—

20 (1) in item (aa)—

21 (A) by inserting “subject to item (bb)” be-
22 fore “in the case”; and

23 (B) by striking “and” after the semicolon;
24 and

1 (2) in item (bb), by inserting “, a temporary
2 staffing agency (as defined in section the Restoring
3 Worker Power Act of 2020),” after “public agency”.

4 **SEC. 12. GAO STUDY.**

5 (a) STUDY.—Not later than 10 months after the date
6 of the enactment of this Act, the Comptroller General of
7 the United States shall submit to Congress the results of
8 a study on the use of temporary and staffing agencies by
9 the entities described in subsection (b), including a de-
10 scription of—

11 (1) the change in spending by such entities on
12 temporary workers from fiscal year 2009 to fiscal
13 year 2019;

14 (2) the total number of temporary workers at
15 each agency, and their total hours worked;

16 (3) the type of services or care delivered by
17 temporary workers; and

18 (4) the effect of such rates on—

19 (A) quality of service or care and the effi-
20 ciency of such agency; and

21 (B) the wages and benefits received by
22 temporary workers in comparison to the cost of
23 their employment and in comparison to directly
24 hired employees performing the same or similar
25 work, and the rates of injury and illness of em-

1 ployees and of temporary workers at such agen-
2 cies.

3 (b) COVERED ENTITIES.—The entities described in
4 this subsection are the following:

- 5 (1) The Department of Veterans Affairs
6 (2) The Indian Health Service.
7 (3) The Department of Defense.
8 (4) The Bureau of Prisons.

○