

By: Representative Paden

To: Workforce Development;
Judiciary A

HOUSE BILL NO. 140

1 AN ACT TO CREATE THE DAY AND TEMPORARY LABOR SERVICES ACT; TO
 2 PROVIDE FOR THE PROTECTION OF THE LABOR AND EMPLOYMENT RIGHTS OF
 3 LOW-WAGE DAY OR TEMPORARY LABORERS WHO ARE PARTICULARLY VULNERABLE
 4 TO ABUSE OF THEIR LABOR RIGHTS, INCLUDING UNPAID WAGES, FAILURE TO
 5 PAY FOR ALL HOURS WORKED, MINIMUM WAGE AND OVERTIME VIOLATIONS,
 6 AND UNLAWFUL DEDUCTION FROM PAY FOR MEALS, TRANSPORTATION,
 7 EQUIPMENT AND OTHER ITEMS; TO PROVIDE DEFINITIONS FOR CERTAIN
 8 TERMS; TO PROVIDE THAT A THIRD-PARTY CLIENT SHALL ONLY USE A DAY
 9 OR TEMPORARY LABOR SERVICE AGENCY FOR THE PURPOSE OF TEMPORARILY
 10 REPLACING A PERMANENT EMPLOYEE, TEMPORARILY INCREASING WORKLOAD OR
 11 EXECUTING WORK OF AN EXCEPTIONAL NATURE; TO PROVIDE FOR THE
 12 MAXIMUM LENGTH OF THE TEMPORARY EMPLOYMENT; TO PROVIDE CERTAIN
 13 NOTICE THAT MUST BE GIVEN TO DAY OR TEMPORARY LABORERS; TO PROVIDE
 14 THE RECORDS THAT MUST BE KEPT BY A DAY AND TEMPORARY LABOR SERVICE
 15 AGENCY; TO PROVIDE THE REGULATIONS REGARDING MEALS, TRANSPORTATION
 16 AND EQUIPMENT FOR DAY AND TEMPORARY LABOR SERVICE AGENCY AND
 17 THIRD-PARTY CLIENTS; TO PROVIDE FOR CERTAIN NOTICES THAT MUST BE
 18 PRINTED ON THE DAY OR TEMPORARY LABORERS' PAYMENT STUB; TO PROVIDE
 19 FOR CIVIL AND CRIMINAL PENALTIES WHEN CERTAIN VIOLATIONS OCCUR;
 20 AND FOR RELATED PURPOSES.

21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

22 **SECTION 1.** This act shall be known and may be cited as "The
 23 Day and Temporary Labor Services Act."

24 **SECTION 2.** The Legislature finds that recent studies and a
 25 survey of low-wage day or temporary laborers themselves finds that
 26 as a group, they are particularly vulnerable to abuse of their
 27 labor rights, including unpaid wages, failure to pay for all hours



28 worked, minimum wage and overtime violations, and unlawful
29 deduction from pay for meals, transportation, equipment and other
30 items. Current law is inadequate to protect the labor and
31 employment rights of these workers.

32 **SECTION 3.** The following words and phrases shall have the
33 meanings as defined in this section unless the context clearly
34 indicates otherwise:

35 (a) "Day or temporary laborer" means a natural person
36 who contracts for employment with a day and temporary labor
37 service agency.

38 (b) "Day and temporary labor" means work performed by a
39 day or temporary laborer at a third-party client, the duration of
40 which may be specific or undefined, pursuant to a contract or
41 understanding between the day and temporary labor service agency
42 and the third-party client. "Day and temporary labor" does not
43 include labor or employment of a professional or clerical nature.

44 (c) "Day and temporary labor service agency" means any
45 person or entity engaged in the business of employing day or
46 temporary laborers to provide services, for a fee, to or for any
47 third-party client pursuant to a contract with the day and
48 temporary labor service agency and the third-party client.

49 (d) "Department" means the Mississippi Department of
50 Employment Security.



51 (e) "Third-party client" means any person that
52 contracts with a day and temporary labor service agency for
53 obtaining day or temporary laborers.

54 (f) "Person" means every natural person, firm,
55 partnership, co-partnership, limited liability company,
56 corporation, association, business trust or other legal entity, or
57 its legal representatives, agents or assigns.

58 **SECTION 4. Reasons for use of day and temporary labor**

59 **service agency.** A third-party client shall only use a day or
60 temporary labor service agency for the purpose of temporarily
61 replacing a permanent employee, temporarily increasing workload or
62 executing work of an exceptional nature.

63 **SECTION 5. Length of temporary employment.** A third-party
64 client's maximum duration of employment of a day or temporary
65 laborer shall be limited to a duration of ninety (90) consecutive
66 days. After ninety (90) consecutive days, the employment
67 conditions of temporary workers must directly correspond to those
68 of permanent staff. However, exemptions may exist subject to
69 collective bargaining agreements.

70 **SECTION 6. Employment notice.** (1) (a) Whenever a day and
71 temporary labor service agency agrees to send one or more persons
72 to work as day or temporary laborers, the day and temporary labor
73 service agency shall provide to each day or temporary laborer, at
74 the time of dispatch, a statement containing the following items
75 on a form approved by the department:



76 (i) The name of the day or temporary laborer;
77 (ii) The name and nature of the work to be
78 performed and the types of equipment, protective clothing and
79 training that are required for the task;
80 (iii) The wages offered;
81 (iv) The name and address of the destination of
82 each day or temporary laborer;
83 (v) Terms of transportation; and
84 (vi) Whether a meal or equipment, or both, are
85 provided, either by the day and temporary labor service agency or
86 the third-party client, and the cost of the meal and equipment, if
87 any.

88 (b) If a day or temporary laborer is assigned to the
89 same assignment for more than one (1) day, the day and temporary
90 labor service agency is required to provide the employment notice
91 only on the first day of the assignment and on any day that any of
92 the terms listed on the employment notice are changed.

93 (c) If the day or temporary laborer is not placed with
94 a third-party client or otherwise contracted to work for that day,
95 the day and temporary labor service agency shall, upon request,
96 provide the day and temporary laborer with a confirmation that the
97 day or temporary laborer sought work, signed by an employee of the
98 day and temporary labor service agency, which shall include the
99 name of the agency, the name and address of the day or temporary



100 laborer, and the date and the time that the day or temporary
101 laborer receives the confirmation.

102 (2) No day and temporary labor service agency may send any
103 day or temporary laborer to any place where a strike, a lockout or
104 other labor trouble exists.

105 (3) The department shall mandate to day and temporary labor
106 service agencies that those agencies use effective interpretation
107 resources to communicate information required in subsections (1)
108 and (2) to day or temporary laborers in Spanish, Vietnamese or any
109 other language that is generally understood in the locale of the
110 day and temporary labor service agency.

111 **SECTION 7. Recordkeeping.** (1) Whenever a day and temporary
112 labor service agency sends one or more persons to work as day or
113 temporary laborers, the day and temporary labor service agency
114 shall keep the following records relating to that transaction:

115 (a) The name, address and telephone number of each
116 third-party client, including each worksite, to which day or
117 temporary laborers were sent by the agency and the date of the
118 transaction;

119 (b) For each day or temporary laborer, the name and
120 address, the specific location sent to work, the type of work
121 performed, the number of hours worked, the hourly rate of pay and
122 the date sent. The third-party client shall be required to remit
123 all information required under this paragraph (b) to the day and
124 temporary labor service agency no later than seven (7) days



125 following the last day of the work week worked by the day or
126 temporary laborer. Failure of a third-party client to remit such
127 information to a day and temporary labor service agency shall not
128 be a defense to the recordkeeping requirement of this section;

129 (c) The name and title of the individual or individuals
130 at each third-party client's place of business responsible for the
131 transaction;

132 (d) Any specific qualifications or attributes of a day
133 or temporary laborer, requested by each third-party client;

134 (e) Copies of all contracts, if any, with the
135 third-party client and copies of all invoices for the third-party
136 client;

137 (f) Copies of all employment notices provided in
138 accordance with subsection (1) of Section 12;

139 (g) Deductions to be made from each day or temporary
140 laborer's compensation made by either the third-party client or by
141 the day and temporary labor service agency for the day or
142 temporary laborer's transportation, food, equipment, withheld
143 income tax, withheld social security payments and every other
144 deduction;

145 (h) Verification of the actual cost of any equipment or
146 meal charged to a day or temporary laborer;

147 (i) The race and gender of each day or temporary
148 laborer sent by the day and temporary labor service agency, as
149 provided by the day or temporary laborer; and



150 (j) Any additional information required by rules
151 promulgated by the department.

152 (2) The day and temporary labor service agency shall
153 maintain all records under this section for a period of five (5)
154 years from their creation. The records shall be open to
155 inspection by the department during normal business hours.
156 Records described in paragraphs (a), (b), (c), (f), (g), and (h)
157 of subsection (1) shall be available for review or copying by that
158 day or temporary laborer during normal business hours within five
159 (5) days following a written request. In addition, a day and
160 temporary labor service agency shall make records related to the
161 number of hours billed to a third-party client for that individual
162 day or temporary laborer's hours of work available for review or
163 copying during normal business hours within five (5) days
164 following a written request. The day and temporary labor service
165 agency shall make forms, in duplicate, for such requests available
166 to day or temporary laborers at the dispatch office. The day or
167 temporary laborer shall be given a copy of the request form. It
168 is a violation of this section to make any false, inaccurate or
169 incomplete entry into any record required by this section, or to
170 delete required information from any such record.

171 **SECTION 8. Meals.** A day and temporary labor service agency
172 or a third-party client shall not charge a day or temporary
173 laborer for any meal not consumed by the day and temporary laborer
174 and, if consumed, no more than the actual cost of a meal. In no



175 case shall the purchase of a meal be a condition of employment for
176 a day or temporary laborer.

177 **SECTION 9. Transportation.** (1) A day and temporary labor
178 service agency or a third-party client or a contractor or agent of
179 either shall charge no fee to transport a day or temporary laborer
180 to or from the designated worksite.

181 (2) A day and temporary labor service agency is responsible
182 for the conduct and performance of any person who transports a day
183 or temporary laborer from the agency to a worksite, unless the
184 transporter is: (a) a public mass transportation system; (b) a
185 common carrier; (c) the day or temporary laborer providing his or
186 her own transportation; or (d) selected exclusively by and at the
187 sole choice of the day or temporary laborer for transportation in
188 a vehicle not owned or operated by the day and temporary labor
189 service agency. If any day and temporary labor service agency
190 provides transportation to a day or temporary laborer or refers a
191 day or temporary laborer as provided in subsection (3), the day
192 and temporary labor service agency may not allow a motor vehicle
193 to be used for the transporting of day or temporary laborers if
194 the agency knows or should know that the motor vehicle used for
195 the transportation of day or temporary laborers is unsafe or not
196 equipped as required by this act or by any rule adopted under this
197 act, unless the vehicle is: (a) the property of a public mass
198 transportation system as defined by statute; (b) the property of a
199 common carrier; (c) the day or temporary laborer's personal



200 vehicle; or (d) a vehicle of a day or temporary laborer used to
201 carpool other day or temporary laborers and which is selected
202 exclusively by and at the sole choice of the day or temporary
203 laborer for transportation.

204 (3) A day and temporary labor service agency may not refer a
205 day or temporary laborer to any person for transportation to a
206 worksite unless that person is: (a) a public mass transportation
207 system; or (b) providing the transportation at no fee. Directing
208 the day or temporary laborer to accept a specific car pool as a
209 condition of work shall be considered a referral by the day and
210 temporary labor service agency. Any mention or discussion of the
211 cost of a car pool shall be considered a referral by the agency.
212 Informing a day or temporary laborer of the availability of a car
213 pool driven by another day or temporary laborer shall not be
214 considered a referral by the agency.

215 (4) Any motor vehicle that is owned or operated by the day
216 and temporary labor service agency or a third-party client, or a
217 contractor or agent of either, or to which a day and temporary
218 labor service agency refers a day or temporary laborer, which is
219 used for the transportation of day or temporary laborers shall
220 have proof of financial responsibility. The driver of the vehicle
221 shall hold a valid license to operate motor vehicles in the
222 correct classification and shall be required to produce the
223 license immediately upon demand by the department, its inspectors
224 or deputies, or any other person authorized to enforce this act.



225 The department shall forward a violation of this subsection to the
226 appropriate law enforcement authorities or regulatory agencies,
227 whichever is applicable.

228 (5) No motor vehicle that is owned or operated by the day
229 and temporary labor service agency or a third-party client, or a
230 contractor or agent of either, or to which a day and temporary
231 labor service agency refers a day or temporary laborer, which is
232 used for the transportation of day or temporary laborers may be
233 operated if it does not have a seat and a safety belt for each
234 passenger. The department shall forward a violation of this
235 subsection to the appropriate law enforcement authorities or
236 regulatory agencies, whichever is applicable.

237 (6) If the day or temporary laborer is provided
238 transportation from the point of application to the worksite by
239 the hiring labor service agency operating pursuant to this act,
240 the day or temporary laborer shall also be provided transportation
241 back to the point of application, unless the day or temporary
242 laborer advises or agrees before leaving for the place of
243 employment to obtain alternative transportation after the work
244 shift is completed.

245 **SECTION 10. Day or temporary laborer equipment.** For any
246 safety equipment, clothing, accessories or any other items
247 required by the nature of the work, either by law, custom or as a
248 requirement of the third-party client, the day and temporary labor
249 service agency or the third-party client shall ensure that the day



250 or temporary laborer has the same opportunities and/or
251 responsibilities for acquiring or receiving such equipment as
252 permanent employees of the third-party client.

253 **SECTION 11. Accommodations.** The public areas of day and
254 temporary labor agencies, where all notices are to be posted, are
255 also required to contain adequate seating and access to restrooms
256 and water.

257 **SECTION 12. Wage payment and notice.** (1) At the time of
258 payment of wages, a day and temporary labor service agency shall
259 provide each day or temporary laborer with a detailed itemized
260 statement, on the day or temporary laborer's paycheck stub or on a
261 form approved by the department, listing the following:

262 (a) The name, address and telephone number of each
263 third-party client at which the day or temporary laborer worked.
264 If this information is provided on the day or temporary laborer's
265 paycheck stub, a code for each third-party client may be used so
266 long as the required information for each coded third-party client
267 is made available to the day or temporary laborer;

268 (b) The number of hours worked by the day or temporary
269 laborer at each third-party client each day during the pay period.
270 If the day or temporary laborer is assigned to work at the same
271 worksite of the same third-party client for multiple days in the
272 same work week, the day and temporary labor service agency may
273 record a summary of hours worked at that third-party client's



274 worksite so long as the first and last day of that work week are
275 identified as well;

276 (c) The rate of payment for each hour worked including
277 any premium rate or bonus;

278 (d) The total pay period earnings;

279 (e) All deductions made from the day or temporary
280 laborer's compensation made either by the third-party client or by
281 the day and temporary labor service agency, and the purpose for
282 which deductions were made, including for the day or temporary
283 laborer's transportation, food, equipment, withheld income tax,
284 withheld social security payments, and every other deduction; and

285 (f) Any additional information required by rules issued
286 by the department.

287 (2) For each day or temporary laborer who is contracted to
288 work a single day, the third-party client shall, at the end of the
289 work day, provide such day or temporary laborer with a Work
290 Verification Form, approved by the department, which shall contain
291 the date, the day or temporary laborer's name, the work location,
292 and the hours worked on that day. Any third-party client who
293 violates this subsection (2) may be subject to a civil penalty not
294 to exceed Five Hundred Dollars (\$500.00) for each violation found
295 by the department. Such civil penalty may increase to Two
296 Thousand Five Hundred Dollars (\$2,500.00) for a second or
297 subsequent violation. For purposes of this subsection (2), each
298 violation of this subsection (2) for each day or temporary laborer



299 and for each day the violation continues shall constitute a
300 separate and distinct violation.

301 (3) A day and temporary labor service agency shall provide
302 each worker an annual earnings summary within a reasonable time
303 after the preceding calendar year, but in no case later than
304 February 1. A day and temporary labor service agency shall, at
305 the time of each wage payment, give notice to day or temporary
306 laborers of the availability of the annual earnings summary or
307 post such a notice in a conspicuous place in the public reception
308 area.

309 (4) At the request of a day or temporary laborer, a day and
310 temporary labor service agency shall hold the daily wages of the
311 day or temporary laborer and make either weekly, bi-weekly or
312 semi-monthly payments. The wages shall be paid in a single check,
313 or, at the day or temporary laborer's sole option, by direct
314 deposit or other manner approved by the department, representing
315 the wages earned during the period, either weekly, bi-weekly or
316 semi-monthly. Vouchers or any other method of payment which is
317 not generally negotiable (including pre-paid debit cards) shall be
318 prohibited as a method of payment of wages. Day and temporary
319 labor service agencies that make daily wage payments shall provide
320 written notification to all day or temporary laborers of the right
321 to request weekly, bi-weekly or semi-monthly checks. The day and
322 temporary labor service agency may provide this notice by



323 conspicuously posting the notice at the location where the wages
324 are received by the day or temporary laborers.

325 (5) No day and temporary labor service agency shall charge
326 any day or temporary laborer for cashing a check issued by the
327 agency for wages earned by a day or temporary laborer who
328 performed work through that agency. No day and temporary labor
329 service agency or third-party client shall charge any day or
330 temporary laborer for the expense of conducting any consumer
331 report, as that term is defined in the Fair Credit Reporting Act,
332 15 USC 1681a(d), any criminal background check of any kind or any
333 drug test of any kind.

334 (6) Day or temporary laborers shall be paid no less than the
335 wage rate stated in the notice as provided in Section 12 of this
336 act for all the work performed on behalf of the third-party client
337 in addition to the work listed in the written description.

338 (7) The total amount deducted for meals, equipment and
339 transportation may not cause a day or temporary laborer's hourly
340 wage to fall below the state or federal minimum wage. However, a
341 day and temporary labor service agency may deduct the actual
342 market value of reusable equipment provided to the day or
343 temporary laborer by the day and temporary labor service agency
344 which the day or temporary laborer fails to return, if the day or
345 temporary laborer provides a written authorization for such
346 deduction at the time the deduction is made.



347 (8) A day or temporary laborer who is contracted by a day
348 and temporary labor service agency to work at a third-party
349 client's worksite but is not used by the third-party client shall
350 be paid by the day and temporary labor service agency for a
351 minimum of four (4) hours of pay at the agreed upon rate of pay.
352 However, in the event the day and temporary labor service agency
353 contracts the day or temporary laborer to work at another location
354 during the same shift, the day or temporary laborer shall be paid
355 by the day and temporary labor service agency for a minimum of two
356 (2) hours of pay at the agreed upon rate of pay.

357 (9) A third-party client is required to pay wages and
358 related payroll taxes to a licensed day and temporary labor
359 service agency for services performed by the day or temporary
360 laborer for the third-party client according to payment terms
361 outlined on invoices, service agreements or stated terms provided
362 by the day and temporary labor service agency. The department
363 shall review a complaint filed by a licensed day and temporary
364 labor agency. The department shall review the payroll and
365 accounting records of the day and temporary labor service agency
366 and the third-party client for the period in which the violation
367 of this act is alleged to have occurred to determine if wages and
368 payroll taxes have been paid to the agency and that the day or
369 temporary laborer has been paid the wages owed him or her.

370 **SECTION 13. Permanent placement.** A day and temporary labor
371 service shall attempt to place a current temporary laborer into a



372 permanent position with a client when the client informs the
373 agency of its plan to hire a permanent employee for a position
374 like the positions for which employees are being provided by the
375 agency at the same work location.

376 **SECTION 14. Work restriction.** No day and temporary labor
377 service agency shall restrict the right of a day or temporary
378 laborer to accept a permanent position with a third-party client
379 to whom the day or temporary laborer has been referred for work or
380 restrict the right of such third-party client to offer such
381 employment to a day or temporary laborer. A day and temporary
382 labor service agency may charge a placement fee to a third-party
383 client for employing a day or temporary laborer for whom a
384 contract for work was effected by the day and temporary labor
385 service agency not to exceed the equivalent of the total daily
386 commission rate the day and temporary labor service agency would
387 have received over a sixty-day period, reduced by the equivalent
388 of the daily commission rate the day and temporary labor service
389 agency would have received for each day. No fee provided for
390 under this section may be assessed or collected by the day and
391 temporary labor service agency when the day or temporary laborer
392 is offered permanent work following the suspension or revocation
393 of the day and temporary labor service agency's registration by
394 the department.

395 **SECTION 15. Retaliation. (1) Prohibition.** It is a
396 violation of this act for a day and temporary labor service agency



397 or third-party client, or any agent of a day and temporary labor
398 service agency or third-party client, to retaliate through
399 discharge or in any other manner against any day or temporary
400 laborer for exercising any rights granted under this act. Such
401 retaliation shall subject a day and temporary labor service agency
402 or third-party client, or both, to civil penalties pursuant to
403 this act or a private cause of action.

404 (2) **Protected acts from retaliation.** It is a violation of
405 this act for a day and temporary labor service agency or
406 third-party client to retaliate against a day or temporary laborer
407 for:

408 (a) Making a complaint to a day and temporary labor
409 service agency, to a third-party client, to a co-worker, to a
410 community organization, before a public hearing, or to a state or
411 federal agency that rights guaranteed under this act have been
412 violated;

413 (b) Causing to be instituted any proceeding under or
414 related to this act; or

415 (c) Testifying or preparing to testify in an
416 investigation or proceeding under this act.

417 **SECTION 16. Private right of action.** (1) A person
418 aggrieved by a violation of this act or any rule adopted under
419 this act by a day and temporary labor service agency or a
420 third-party client may file suit in circuit court, in the county
421 where the alleged offense occurred or where any day or temporary



422 laborer who is party to the action resides, without regard to
423 exhaustion of any alternative administrative remedies provided in
424 this act. A day and temporary labor service agency aggrieved by a
425 violation of this act or any rule adopted under this act by a
426 third-party client may file suit in circuit court, in the county
427 where the alleged offense occurred or where the day and temporary
428 labor service agency which is party to the action is located.

429 (2) A day or temporary laborer whose rights have been
430 violated under this act by a day and temporary labor service
431 agency or a third-party client or a day and temporary labor
432 service agency whose rights have been violated under this act by a
433 third-party client is entitled to collect:

434 (a) In the case of a wage and hour violation, the
435 amount of any wages, salary, employment benefits or other
436 compensation denied or lost to the day or temporary laborer or day
437 and temporary labor service agency by reason of the violation,
438 plus an equal amount in liquidated damages;

439 (b) In the case of a health and safety or notice
440 violation, compensatory damages and an amount up to Five Hundred
441 Dollars (\$500.00) for the violation of each subpart of each
442 section;

443 (c) In the case of unlawful retaliation, all legal or
444 equitable relief as may be appropriate; and

445 (d) Attorney's fees and costs.



446 **SECTION 17.** **Day and temporary labor service agency; recovery**
447 **of attorney's fees and costs.** A day and temporary labor service
448 agency may recover attorney's fees and costs in a civil action
449 brought by the day and temporary labor service agency against a
450 third-party client for breach of contract by the third-party
451 client in relation to services provided by the agency to the
452 third-party client if the plaintiff prevails in the lawsuit.

453 **SECTION 18.** **Severability.** Should one or more of the
454 provisions of this act be held invalid, such invalidity shall not
455 affect any of the valid provisions hereof.

456 **SECTION 19.** This act shall take effect and be in force from
457 and after January 1, 2023.

