

**Legal and Legislative Update
NJSA MASA
Executive Leadership Conference
April 18, 2024**



American Staffing Association

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**Potential Legal and Legislative Challenges
in 2024**



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118th Congress

- **House of Representatives**
 - **Republicans: 218** (Drops to 217 on Apr. 19 when Rep. Gallagher (WI) retires)
 - **Democrats: 213**
 - **Vacant: 4** (3 GOP & 1 DEM)
- **U.S. Senate**
 - **Democrats: 51** (48 DEM + 3 IND)
 - **Republicans: 49**
- **118th Congress + election year = little serious activity**
 - Narrow margins mean few bills will receive consideration
 - Opens door for executive action (e.g., Executive Orders and agency directives)



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118th Congress

- **Top Congressional Issues for the Remainder of 2024**
 - Impeachment trial of DHS Sect. Mayorkas (Senate only)
 - Tax bill
 - Cannabis banking
 - FISA reauthorization (expires Apr. 19)
 - FAA Authorization (expires May 10)
 - Ukraine aid
 - Supplemental spending package to address Francis Scott Key bridge disaster
 - FY 2025 Appropriation bills
 - Confirmation of Judges (Senate only)
 - Motion to Vacate (House only)



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Biden Administration

- **DOL Final Independent Contractor Rule**
 - Harder to classify workers as independent contractors
 - Largely will not affect ASA members
 - Legal challenge
 - Increased scrutiny on state and federal levels, regardless of legal challenge.
 - Online platforms: health care, industrial, hospitality
- Resources: ASA client issue papers
- ASA position with press interviews



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Biden Administration

- **Pending Administrative Actions**
 - U.S. Federal Trade Commission
 - Final rule: ban on noncomplete agreements
 - Antitrust enforcement: no-poaching
 - U.S. Department of Labor
 - Final overtime rule
- Continued focus on the industry by DOL, U.S. Equal Employment Opportunity Commission, U.S. Occupational Safety and Health Administration



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State Issues

- **Health Care Staffing**
 - Limited introduction of new bills
 - Advocacy focus:
 - Working on legislation introduced in 2024
 - Tracking and engaging on 2023 bills that carried over
 - Commenting on proposed rules and regulations
 - Addressing use of independent contractors in health care facilities
 - Preparing for 2025 and beyond



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State Issues

- **Antistaffing Legislation: Temporary Worker Right to Know**
 - New Jersey
 - Awaiting final regulations
 - Illinois
 - HR 3641: delayed equal pay and benefits mandate until April 1
 - Awaiting final regulations
 - Maine
 - ASA lobbied sponsor, “placeholder” bill withdrawn
 - Michigan
 - TWRTK legislation pending, ASA engaged



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State Issues

- **Illinois: Federal Court Enjoins Illinois Equal Benefits Mandate**
 - August 2023: Gov. Pritzker signs into law amendments to the state's Day and Temporary Labor Services Act.
 - The industry sued to enjoin the three most troubling amendments including:
 - Section 42—requiring temporary staffing agencies to offer certain employees benefits that are equivalent to those offered by the staffing agency's client, or otherwise pay the employees the actual cash value of the client's benefits
 - Section 11—requiring temporary staffing agencies to alert their employees to any labor disputes occurring at a client site prior to dispatch and further providing a guaranteed right to reassignment
 - Section 67—allowing any interested party to initiate duplicative litigation in the case of suspected Day and Temporary Labor Services Act violations



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 - Section 11—requiring temporary staffing agencies to alert their employees to any labor disputes occurring at a client site prior to dispatch and further providing a guaranteed right to reassignment: **Reserved judgement until other key issues have been more fully litigated**
 - Section 67—allowing any interested party to initiate duplicative litigation in the case of suspected Day and Temporary Labor Services Act violations: **Denied.**



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 - **Section 42—requiring temporary staffing agencies to offer certain employees benefits that are equivalent to those offered by the staffing agency's client, or otherwise pay the employees the actual cash value of the client's benefits: GRANTED**
 - Section 11—requiring temporary staffing agencies to alert their employees to any labor disputes occurring at a client site prior to dispatch and further providing a guaranteed right to reassignment: **Reserved judgement until other key issues have been more fully litigated**
 - Section 67—allowing any interested party to initiate duplicative litigation in the case of suspected Day and Temporary Labor Services Act violations: **Denied.**



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State Issues

- **What Does this Mean for the State of Illinois?**
 - The state is enjoined from enforcing the equal benefits provision of the law
 - The state will continue to work on drafting and releasing proposed final regulations
 - The state's Attorney General must decide if they want to:
 - Appeal the court's decision
 - Amend the current law with the court's most recent ruling in mind
 - Both



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State Issues

- **What Does this Mean for the State of New Jersey?**
 - ASA has decided to file an ERISA preemption claim against the New Jersey equal benefits mandate.
 - The claim will be filed as an amendment to the current lawsuit challenging the Temporary Workers' Bill of Rights Act.
 - ASA has retained Anthony Shelley, a partner in the Washington, DC law firm of Miller & Chevalier, to handle the ERISA claim.
 - Steven Harz, partner in Javerbaum, Wurgaft, Hicks, Kahn, Wikstrom & Sinins, P.C., remains counsel of record in the lawsuit and will continue to represent ASA, NJSA, and NJBIA on the non-ERISA claims.



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State Issues

- **General Staffing Issues**
 - **Wage parity**
 - Demographics reporting
 - Equal pay and benefits
 - **Wage disclosure**
 - Posting of wage range in job postings
 - Salary history
 - **Noncompete agreements**
 - **Potential ban on conversion fees**



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State Issues

- **Other Issues of Interest**
 - Artificial intelligence
 - Predictive scheduling
 - Paid leave
 - California Private Attorneys General Act (PAGA) reform ballot initiative



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California



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California AB 2741

- **Features of AB 2741**
 - Bill rate disclosure
 - Ban on conversion fees
 - Direct hire of “long-term” employees
 - First offer for permanent positions
 - Notice of labor disputes
 - Presumption of retaliation
 - Client disclosure of temporary employees hired permanently



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California AB 2741

- A massive grassroots effort was mobilized in opposition to this bill
- Several firms were able to get clients to weigh in against the bill as well
- California Chamber of Commerce agreed to add bill to their “Jobs Killer” list
- The author of the bill, Assemblymember Matt Haney, tried several times to have the industry negotiate with him to make the bill better.
- On March 21, Haney reaches out to ASA California lobbyist Mike Robson to tell him he is gutting the bill and removing all references to staffing.
- April 2, bill is amended to deal with surveillance methods used by rental car companies



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2024 Election Forecast: House of Representatives

- **GOP**
 - **Safe: 193**
 - **Likely: 9**
 - **Lean: 8**
 - **Tossup: 11**
- **DEM**
 - **Safe: 173**
 - **Likely: 17**
 - **Lean: 13**
 - **Tossup: 11**

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2024 Election Forecast: United States Senate

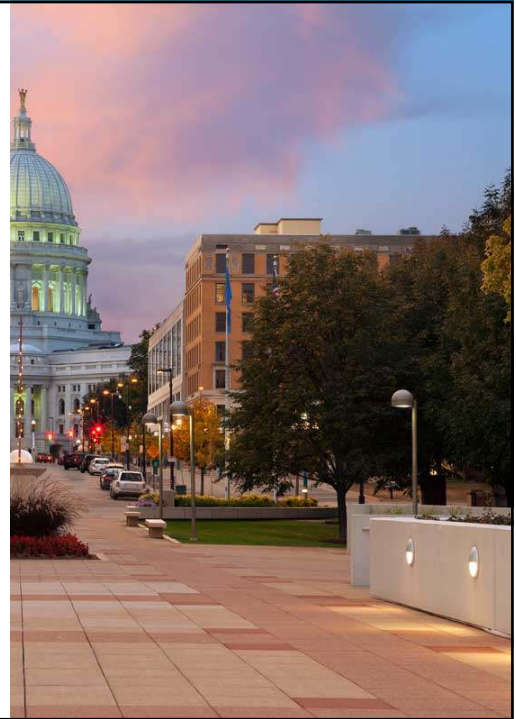
- **GOP (11 seats)**
 - **Safe: 9**
 - **Likely: 2 (FL and TX)**
 - **Lean: 0**
 - **Tossup: 0**
- **DEM (23 seats)**
 - **Safe: 14**
 - **Likely: 1 (MD)**
 - **Lean: 3 (MI, PA and WI)**
 - **Tossup: 4 (AZ, MT, NV and OH)**
 - **GOP Favored: 1 (WV)**



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2024 Election Forecast: U.S. Governors

- **GOP (8 seats)**
 - **Safe: 7**
 - **Likely: 0**
 - **Lean: 0**
 - **Tossup: 1 (NH)**
- **DEM (3 seats)**
 - **Safe: 1**
 - **Likely: 1**
 - **Lean: 1 (NC)**
 - **Tossup: 0**



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2024 Election Forecast: Electoral Votes

- **US Electoral Map**
 - **GOP: 235**
 - **DEM: 226**
 - **Toss-up: 77**
 - **Arizona, Georgia, Michigan, Nevada, Pennsylvania, and Wisconsin**



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Questions?



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