

**Summary of Testimony: Regulation 454 CMR 24.00**  
**Employment Agency and Temporary Workers Right to Know Regulations**

**Notes:**

- Date of Public Hearings: 7/21/14 (Worcester), 7/22/14 (Boston), 7/25/14 (Springfield)
- Comment period closed 8/1/14
- 9 written comments received during comment period
- 113 hearing attendees

<b><u>COMMENTS</u></b>	<b><u>DISCUSSION</u></b>	<b><u>CHANGE TO PROPOSAL</u></b>
<p>Consideration to the application of definitions and thus the regulations should be given to online staffing platforms, given the proliferation of companies that engage in staffing exclusively through electronic means. Any regulations to so-called “traditional” staffing agencies should also be applied to online staffing services.</p>	<p>DLS agrees that the EA and TWRK laws and these regulations apply to online staffing platforms and has not excluded businesses without “brick and mortar” presence from its purview. Provided that a business engages in the activities covered by the regulations, it is engaging in regulated activity.</p>	<p>None needed.</p>
<p>We urge DLS to retain the broad definitions set forth in the TWRKL in its final regulations.</p>	<p>DLS has sought to draft regulations which embody the spirit and letter of the two laws. Changes to particular definitions are addressed below.</p>	<p>None needed.</p>
<p>Charges to workers permitted under Section 24.10 (e.g., the actual cost of debit cards or payroll cards) do not constitute Applicant Fees. For the avoidance of doubt, the definition of Applicant Fee should explicitly exclude such charges.</p>	<p>The definition of the term is clear. Other limitations on charges and deductions are more properly set forth in other sections.</p>	<p>Note that the department has added at new 24.07(1)(g), 24.09(5)(a), 24.10(1): Charges may be further limited by M.G.L. c. 149, sections 148 and 150, and M.G.L. c. 151 and its regulations. Written authorization does not make a charge lawful if it is otherwise unlawful.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>The regulations purport to regulate the contents of the client work order or requisition. Staffing firms do not have any control over what the client chooses to place in the job requisition and regulating a client work order goes beyond the scope of the statutes for which these regulations are proposed. There's no definition of client work order in the statutes. This goes beyond the scope of the two laws.</p>	<p>M.G.L. c. 140, section 46H requires employment agencies to keep a register of the name and address of every employer from whom a fee is received or charged, the date of such employer's request or assent that applicants be furnished, the kind of position for which the applicants are requested, the names of the applicants sent, the total amount of the fee, and the rate of salary or wages agreed upon.</p> <p>M.G.L. c. 140, section 46K(3) prohibits an employment agency from directing an applicant to a job without having first obtained a "recent bona fide order therefor..."; "bona fide order" is not defined.</p> <p>M.G.L. c. 149, section 159C(d) provides, "Any staffing agency that sends an employee to a worksite employer for employment that day where in fact no employment exists shall fully refund the cost of transportation."</p> <p>The term "client work order" has been changed to reflect the statutory language of "bona fide order." The term and requirements for "Job Order" have been modified and reorganized for clarification. No substantive changes have been made to the definition or requirements.</p>	<p>The term "client work order" is changed to "bona fide order."</p> <p>The definition of "Job Order" is changed to: "the information required to be furnished by Employment Agencies as set forth in 24.07, or the information required to be furnished by Staffing Agencies as set forth in 24.08." The respective Job Order requirements are moved to 24.07 and 24.08, which changes the numbering.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>The proposed changes recognize that home care agencies do not belong in the same oversight structure as employment, staffing, and placement agencies. As much as the shift is welcomed, we must acknowledge that MA lacks any other licensure or state oversight for home care agencies. We urge a commitment from and partnership with DLS and EOLWD to collaborate with other organizations to help transition away from DLS registration. The transition plan can include the following:</p> <ul style="list-style-type: none"> <li>• Education provided by DLS with trades associations and others to guarantee that state rules and regulations are understood by businesses.</li> <li>• Support from DLS and EOLWD around an advocacy effort with the legislature and other state agencies to pass meaningful licensure measures that will protect consumers and workers and establish standards for quality home care services.</li> <li>• Education about trade organization’s accreditation program(s), established to create a set of standards for private-pay home care agencies.</li> <li>• Educate long-term care insurance companies about these alterations in state regulations and the existing regulatory/trade organization accreditation landscape.</li> <li>• Name a special workgroup that could help the transition process to educate home care agencies about the existing regulatory/trade organization accreditation landscape and changes thereto.</li> </ul>	<p>DLS recognizes that it has been issuing employment agency licenses and placement agency registrations to home care agencies which directly employ their workers, and that one of the consequences of these regulations is that those entities will no longer be considered to be employment or placement agencies. DLS stands ready to assist the trade organizations representing this industry in any way that will make the transition easier and is available to meet to discuss an action plan.</p>	<p>None needed.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>We've always felt that the regulation of home care agencies that directly employ, supervise, hire, train their workers was a misinterpretation of the statute because these workers are employees of home care agencies. We are pleased to see this change, although we have some concerns. Our association has been working to develop standards of best practice for the home care industry for over forty years. We do offer standards and we have developed a network that is really strong in terms of supporting the workforce. There is not a body in MA that is looking at the quality of care provided to private pay individuals that are not being paid for or through the federal government or state funded services. We welcome the opportunity to work with your office as you transition in this time of no longer licensing private pay home care agencies that do not work with either federal or state payers. We have some concerns about the home care agencies licensed by your department that are using that license number to provide to long term care insurance companies, so we're hoping you can work with the Department of Insurance to work through that issue.</p>	<p>See above.</p>	<p>None needed.</p>
<p>I am concerned that licensure of my home care agencies will no longer be regulated by your department. Up until now, your department has been providing necessary standards surrounding employment. Currently there is no state agency that is regulating quality of care. There need to be standards for employees and for the vulnerable population that home care agencies serve.</p>	<p>DLS is responsible for interpreting and administering the state's employment agency and temporary workers right to know laws. DLS does not regulate home care. Agencies which place domestic employees as defined by the proposed regulation will continue to be regulated as employment agencies as defined by the regulation. See comments above.</p>	<p>None needed.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>The proposed definition of “employee” could be interpreted to mean that an individual is not an employee of a worksite employer if the employment is arranged by a staffing agency. We suggest that the department add under the definition of employee: “An individual may be jointly employed by more than one employer; for example, an employee of a worksite employer also may be an employee of a staffing agency.”</p>	<p>The regulations address the rights and responsibilities of agencies, employers, applicants and workers under the Employment Agency and TWRTK laws. Joint employer is more properly addressed under other statutory authority.</p>	<p>None.</p>
<p>For clarity, we suggest that the definition of “employee” be revised to read: “an individual employed directly by an employer, including a staffing agency, or an individual for whom an agency procures or arranges employment with a work site employer.”</p>	<p>The revision provides clarity and is accepted.</p>	<p>The definition of “employee” is revised: after the word “an” replace “employer, including a staffing agency,” with “agency”</p>
<p>The proposed definition of “employer” is an impermissible narrowing of the broad definition set forth in Section 159C of Chapter 149. Moreover, the statutory definition of “employer” in Section 159C mirrors the definition of “Employer” in the federal Fair Labor Standards Act. The definition should follow the statute.</p>	<p>The DLS agrees that the definition should be consistent with MA and federal law.</p>	<p>The definition of “employer” is revised: an individual, company, corporation, partnership, or other entity that directly or indirectly engages the services of an employee or employees.”</p>
<p>The regulations should clarify that a “job order” must include a start date of the assignment. This requirement is a necessary extension of the statutory requirement that the job order include a daily start time—without knowing the date, the daily start time is meaningless. The definition could be revised as follows: “(4) the start date of the assignment, the daily starting time and anticipated end time, and when known, the expected duration of employment.”</p>	<p>DLS agrees that this is a logical and necessary extension of the statutory requirement to provide the “daily starting time.” As the intent of the law is to provide workers with basic information about their job assignments, the suggested addition will be incorporated.</p>	<p>See also above revision to the definition of “Job Order.” 24.07(1)(d) states: “The start date and anticipated duration of the assignment, if known;” and 24.08(1)(d) states: “the start date and expected duration of employment, when known;”</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>The proposed definition of “job order” does not distinguish between those workers for whom the job order is applicable; rather the draft definition seemingly applies to all workers. Given that the job order is inapplicable to professional employees, secretaries, and administrative assistants, the definition should exclude such workers.</p>	<p>The definition of “job order” would not change whether applicable or not applicable to a particular person. New section 24.08(7) <u>Information Required to be Furnished to Job Applicants or Workers by Staffing Agencies</u> states that a staffing agency does not have to provide the Job Order to Professional Employees, Secretaries, or Administrative Assistants.</p>	<p>None needed.</p>
<p>Many provisions in the proposed definition of job order would be inapplicable to certain employment agencies (i.e. certain direct hire firms) that do not employ workers placed with clients; rather, their clients hire and employ such workers. Therefore, with respect to these agencies, the obligation to provide written notice of the following should be stricken: (i) workers’ compensation carrier of the employment agency; (ii) whether the position will require special equipment, etc.; and (iii) details regarding pay days, meals, transportation, and start and end time.</p>	<p>DLS concurs with this observation, and has modified and reorganized the definition and requirements of “Job Order” as described above on page 3. No substantive changes have been made to the definition or requirements.</p>	<p>See description of change on page 2.</p>
<p>With respect to staffing agencies, we note that the TWRKL does not require <i>written</i> notice of the existence or strike or lockout.</p>	<p>DLS agrees that the TWRKL does not require written notice of a location that is on strike or lockout under. However, a staffing agency must notify a worker if there is a strike or lockout. In the spirit of the intent of the TWRKL to provide information to temporary workers, and so that staffing agencies can fulfill the requirement that they notify workers of that specific piece of information, DLS will leave this as a requirement of the Job Order.</p>	<p>None.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>The proposed definition of “person,” and the listed exclusions, is taken almost verbatim from the Employment Agency Statute. The TWRKL, on the other hand, does not define a “person,” and therefore, the exclusions impermissibly narrow the term “person” when used in sections pertaining to staffing agencies and worksite employers. In addition, the term “individual” has been used to replace “person” in Section 24.15, which also impermissibly narrows that statute. A suggested solution to this is to insert a period after “or their agents or employees” and then to start the next sentence as follows: “For the purposes of the Employment Agency Statute only, “person” shall not include a labor organization...”</p>	<p>The DLS agrees with this comment and has made changes to reflect the statutory language.</p> <p>***See also Pages 39-40 Comments and Discussion**</p>	<p>In 24.02 <u>Definitions</u>, the definition of “Person” is changed by inserting after the word “employees”: “. For the purposes of the Employment Agency Statute only, “person””, and deleting the word “but”</p> <p>In 24.15 the word “individual” is replaced with “person”</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>The term placement agency is not defined and is not even referenced in either of the statutes and is created for the first time in these regulations. The statutes define and address only “employment agencies” and “staffing agencies.” What is the purpose of inserting this new concept in the regulations, what does it intend to cover that is not covered by the other two definitions and how is it different (or broader) than the definition of Staffing Agency?</p>	<p>DLS agrees that the term “placement agency” is not found in either statute. However, M.G.L. c. 140, section 46A defines an employment agency in part by what it is not. Therefore, if an entity for a fee, procures or attempts to procure permanent or temporary help, employment or engagements, or registers persons seeking such help, employment or engagement, or gives information as to where and of whom such help, employment or engagement may be procured, but it meets one of the limited exceptions to the term employment agency, it is still required to register with the Department. In using the term “placement agency,” DLS is giving a name to those entities which engage in activity pursuant to Section 46A. For many years, DLS has registered these entities as “service firms” or “service agencies” to distinguish them from “employment agencies” which are required to be licensed. We are departing from those terms to use a more suitable term.</p>	<p>None.</p>
<p>It seems like anyone who is a staffing agency should also be a placement agency?</p>	<p>For the most part, yes. However, a placement agency will not always be a staffing agency. There are three defined terms. Agencies will always be either an employment agency or a placement agency and then they may also be a staffing agency.</p>	<p>None needed.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>I'd encourage you to go back to the statute where they talk about employee, rather than use job applicant and worker.</p>	<p>Due to the fact that the two underlying statutes address different employment scenarios—some pre-hire and some active employment, and given concerns about misclassification of employees, DLS needs to ensure the language is broad enough to encompass the different scenarios in which people may be interacting with employment and staffing agencies.</p>	<p>None.</p>
<p>The definition of “professional employee” gives a list of examples and none of these examples reference the many professional occupations in the IT industry that meet the definition. Adding to the definition examples of IT positions would give more clarity to the many IT staffing firms in MA. Examples would include computer systems analyst, computer programmer, software or web developer, software engineer, software application developer. The department could also reference all those professions contained within NAICS Code 541, “Professional, Scientific and Technical Services.”</p>	<p>The definition of “professional employee” quotes directly from 29 U.S.C. Section 152, which is referenced in M.G.L. c. 149, section 159C. That statute pertains to the professional exemption from overtime under the Fair Labor Standards Act. The jobs specified are not set out at 29 U.S.C. Section 152, but are examples that are not intended to be exclusive of other jobs. Since a list of jobs cannot be comprehensive and since jobs may change, the DLS has determined that the list of examples is not appropriate for a regulation. DLS will provide separate guidance regarding the definition of “professional” under the law.</p> <p>Certain computer employees may be considered “professional” under the law, although “computer-related occupations” is a separate category under the FLSA.</p> <p>NAICS Code 541 is not the proper reference for determination of “professional” employee under the statute. The DLS regularly responds to questions regarding whether a particular employee is a “professional” and will continue to do so in regard to 159C.</p>	<p>In 24.02: Definitions, “Professional Employee”: delete the last sentence of examples.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>Because professional employees are exempt from the written notice requirement under the TWRKL, the regulations should provide staffing agencies with enough information to allow them to make determinations whether certain workers are exempt from the job notice requirement. For example, some agencies place workers whom they consider to be engineering or information technology professionals; however, some of these workers may have certifications and years of work experience, as opposed to college degrees. The regulations, therefore, should provide guidance regarding the circumstances under which workers who have not engaged in a “course of specialized intellectual instruction” nevertheless may still qualify as professional employees. We suggest that the definition be expanded by including the following:</p> <p style="padding-left: 40px;">Work performed by professional employees typically include, but are not limited to: legal advice and representation; accounting; architectural, electrical, engineering, gas and plumbing and specialized design services; computer services; consulting services; research services; advertising services; health care and veterinary services; and other professional, scientific, information technology, and technical services.</p>	<p>See above. The applicability of the “professional” designation is determined based on the factors set forth in 29 U.S.C. Section 152, as referenced in 159C. It may not be broadly applied to types of services provided. The DLS will continue to analyze whether an employee is a “professional” based on review of the specific qualifications and duties. It may be noted that a number of the job categories and titles listed in the comment are not in fact exempt professionals under MA law or the Fair Labor Standards Act, and would not be exempt from the requirements of section 159C. For example, employees in mechanical arts or skilled trades may have fairly advanced knowledge, but are specifically not exempt professionals under the law.</p>	<p>See above.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>Professional employees typically will include but are not limited to: academic counselors; account managers; accountants; actuaries; architects; auditors; chemists; computer programmers; computer repair persons; computer software engineers; computer systems analysts; computer-aided designers; credit managers; dental hygienists; dentists; economists; editors; writers; electricians; engineers; financial consultants; gas fitters; health technologists and technicians; human resource managers and personnel; information technology personnel, insurance adjusters; journalists; laboratory technicians; lawyers; licensed vocational nurses; loan originators; management consultants; managers; marketing personnel and representatives; market research analysts; meeting planners; mental health specialists;; occupational therapist; optometrists; paralegals; pharmacists; physical therapists; physician assistants; pilots; plumbers; podiatrists; principals/superintendents; project managers; psychiatrists; psychologists; public affairs and public relations personnel; radiology technicians; real estate agents; recruiters; registered nurses; registered medical technologists; reporters; sales personnel; speech pathologists and audiologists; social workers; statisticians; surveyors; teachers; veterinarians; vice-principals; and vocational therapists.</p>	<p>Same as above.</p>	<p>See above.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
We ask that you designate what positions are covered by the law, to make it crystal clear that those positions need the job order. Larger agencies might be able to send it to everyone as a sort-of insurance policy, but that may not be possible for some of the smaller agencies that aren't automated or don't have a lot of resources.	See above.	See above.
Highly-skilled technical employees who may not have a college degree should be considered professionals.	See above.	See above.
With regard to the definition of professional employee, there is a trend evolving where employers are relaxing the requirement for degrees and require work experience and certifications. These market dynamics should be considered in addressing the definition of professional employees.	See above. The law encompasses consideration of factors other than possession of a degree.	See above.

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>Recognizing that the statutory definitions of “employment agency” and “staffing agency” cannot be changed through regulation, we think that the best way to provide clarity is to provide concrete examples of the various business models that fall under each of the regulations. To that end, we propose that the following be included in any final regulations, as such business models will be readily recognizable to members of the staffing industry:</p> <p>Employment agencies: these are commonly referred to as applicant-paid direct hire firms, in which the worker is hired directly by a client, irrespective of whether the client hires the worker on a permanent or temporary basis; and applicant paid firms that place workers with clients on assignments of 10 or more weeks (i.e. these assignment are not temporary under the applicable definition set forth in section 46N of the Employment Agency Law).</p> <p>Placement agencies: these include client-paid firms that place workers on assignment with clients, regardless of the length; client-paid direct hire firms; and applicant-paid firms that place workers on assignments of less than 10 weeks (i.e. these assignment are not temporary under the applicable definition set forth in section 46N of the Employment Agency Law).</p> <p>Staffing agency: in all cases, a staffing agency will fall under the definition of placement agency.</p>	<p>The law and regulations define the types of agencies covered by the statutes. Agencies must determine whether their business model fits within the definitions or risk violation of the law. The DLS provides assistance as requested and reviews applications to determine if licensing or registration is required.</p>	<p>None</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>There is a wide income range when dealing with temporary staffing agencies, but please do not forget about the low wage worker.</p>	<p>DLS realizes that the employment and staffing agency industry serves workers and job-seekers of all income levels for all types of jobs.</p>	<p>None needed.</p>
<p>In 24.04(3)(h), <u>Information Required for Initial Registration of Placement Agencies</u>, the term “placement manager” is undefined and therefore staffing agencies will be unclear as to whom the term refers.</p>	<p>M.G.L. Chapter 140, section 46C requires that an applicant for an employment agency license provide, “...the name and address of the individual who will actually direct and operate the placement activities of the agency, whether such individual be the applicant or another...” That, and given the inspection authority of the department as prescribed in M.G.L. c. 140, section 46Q, the department needs an applicant for licensure or registration to advise of the name of the agency’s manager. In many cases, the manager is not the same person as the applicant. To avoid confusion for applicants, DLS will remove the term “placement” from those sections.</p>	<p><u>Application Requirements for Employment Agencies and Placement Agencies</u> 24.04(2)(h), strike the term “placement.”</p> <p>24.04(3)(h), strike the term “placement.”</p>
<p>24.04(4) <u>Review of Application, Applicability and Classification</u>, should include a deadline by which the Department must make a decision on a completed application for registration; similar deadlines are included in the Employment Agency Law in order to prevent applicants from having to wait unreasonably long periods of time.</p>	<p>The DLS processes applications in an expeditious manner and adheres to required deadlines. No further time limits are required.</p>	<p>None.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>Applications for license or registration completed by staffing agencies should include a statement of compliance with the TWRKL. This could be accomplished by inserting a subsection (4) specific to Staffing Agencies: “Staffing agencies applying for an initial Employment Agency License or an initial Placement Agency Registration shall certify compliance with M.G.L. c. 149, sec. 159C.</p>	<p>DLS agrees that this is an important addition and will amend the draft regulation accordingly.</p>	<p>Add 24.04(4): Certification of compliance language added at 24.04(2)(t) and 24.04(3)(n).</p>
<p>In 24.05 <u>Application Procedures and Pre-requisites for Issuance of Employment Agency Licenses</u>: For due process purposes, subsection (3)(b) should require notice of a protest to be provided to an employment agency within a specified period of time.</p>	<p>DLS agrees with this comment and will edit the draft regulation accordingly.</p>	<p>24.05(3)(b): Change the last sentence to read, “A copy of any protest and supporting documentation shall be supplied to the License applicant at least five days prior to a License hearing.”</p>
<p>For due process purposes, subsection (3)(c) should state that any protestor may be required to appear at a hearing, at the discretion of the Department or the employment agency applicant.</p>	<p>Section (3)(b) reads, “Said person may be interviewed by the Department and may be called upon to testify at a hearing.” Should a situation arise where an applicant requests the presence of the person filing a protest, the draft regulation makes clear that a person filing a protest may have to appear at the hearing.</p>	<p>None.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>To be consistent with the Employment Agency Law, subsection 4 (<u>Decisions on License Applications</u>) should state an employment agency license will be granted or denied within 40 days of the applicant’s filing.</p>	<p>DLS recognizes that the Employment Agency Law at section 46D states that, “Each application shall be granted or denied within 40 days from the date of its filing.” However, DLS does not consider an application to have been filed until the application is complete and the statutory requirements for inspection and hearing have been completed. All of those required actions must be complete before a decision can be rendered, and therefore, the department will issue a decision within 40 days of the completion of all of the necessary application requirements.</p>	<p>None.</p>
<p>The requirement that the employment agency license be made available to applicants and employees in subsection (5) (<u>Posting and Presentation of Employment Agency Licenses</u>) is overbroad and unnecessary, especially since the names of licensed agencies are available through the department’s website; such notice should be made available to workers <i>upon request</i>.</p>	<p>Section 46B of M.G.L. c. 140 requires that a license is posted in a conspicuous place in each employment agency. Except for an interview that does not occur at the employment agency, “made available” does not mean that copies must be provided to each individual, but that each individual must be able to see the license.</p>	<p>None.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p><u>24.07: Information Required to be Furnished to Job Applicants or Workers by Employment Agencies</u> This section states that all information provided to workers shall be provided in writing in a language in which the worker is conversant. Such a requirement is unreasonable and, in fact, runs counter to the TWRKL, which states that the Department shall, when appropriate, facilitate the translation of the notice to a language other than English. Such a requirement also runs counter to the proposed definition of Job Order, which requires a multi-lingual statement from the Department that the applicant or worker should have the form translated. Agencies should not be required to incur the expense and effort to translate each and every notice into each and every language in which the workers are conversant.</p>	<p>M.G. L. c. 140, sec. 46P requires Employment Agencies to post a copy of sections 46A to 46O of Chapter 140, "...in languages in which persons commonly doing business with such office can understand."</p> <p>The department acknowledges that the TWRKL does not explicitly require a Staffing Agency to provide information about the job assignment to the worker in a specific language. Nevertheless, the intent of the statute is to give information to employees about their job assignment. DLS will leave the requirement in the proposed definition of Job Order that the Job Order must contain a multilingual statement issued by the department that the information is important and that the worker should have the form translated. Language will also be added to encourage use of the translations issued by the DLS.</p>	<p>In Section 24.07 <u>Information Required to be Furnished to Job Applicants or Workers by Staffing Agencies</u>, strike, "and in a language in which the Job Applicant or Worker is conversant."</p> <p>Language added to 24.07(1): The Agency is responsible for ensuring that each Worker understands the specified information. Job Orders are available in multiple languages from the Department, and the Department may obtain additional translations at its sole discretion upon request. The Department recommends that Agencies provide Job Orders in a language that the Worker understands.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>To the extent that any forms, notices, or documents posted or distributed by agencies are to be translated, the Department alone should undertake such translation efforts so as to ensure uniformity and accuracy in translations; the department should reject any calls for agencies to be required to translate forms and documents for workers.</p>	<p>The Department has made a sample Job Order available in five (5) languages, general information about the TWRKL available in three (3) languages, and the notice of rights under the TWRKL available in fifteen (15) languages. DLS will continue to provide assistance with translations as resources are available. However, the burden for ensuring that a worker understands the terms of his/her job assignment rests with Staffing Agencies as the regulated entities.</p> <p>In accordance with M.G.L. c. 140, sec. 46P, Employment Agencies are responsible for posting a copy of sections 46A to 46O “in languages in which persons commonly doing business with such office can understand.</p>	<p>None needed. Except change to 24.07 above.</p>
<p>For me to have to provide documentation in the workers’ conversant language is an overwhelming request; I don’t know how a small business would be able to meet that requirement.</p>	<p>See above.</p>	<p>None needed. Except change to 24.07 above.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>4.08: <u>Information Required to be Furnished to Job Applicants or Workers by Staffing Agencies</u>  The department should require the written job order be provided to each job applicant or worker in a language that he or she understands. The proposed “Babel notice” is not sufficient. Without the requirement of a language-appropriate job order, the legislative intent of providing temporary workers with the “right to know” will go unrealized for this job applicants or workers who are not literate in English. We are not proposing that staffing agencies be required to provide the job order in a language other than English where the worker is conversant in English; however, workers should have the right to self-identify as Limited English Proficiency. This section should be amended by including the following sentence at the end of the existing paragraph: “The job order and any changes to the terms of employment or assignment contained in the Job Order shall be provided to the Job Applicant or Worker in a language understood by the Job Applicant or Worker.</p>	<p>Given that the intent of the TWRTKL is to ensure a worker has information about his/her job assignment, but that the statute does not explicitly require a Staffing Agency to provide information about the job assignment to the worker in a specific language, the department will assume the burden of providing the “Babel notice” to Staffing Agencies and requiring them to make that part of the Job Order. Language has been added to encourage use of the translations issued by the DLS. See pages 17, 18 discussion.</p>	<p>None. See language additions at page 17.</p>
<p>We believe that if temp workers get the information about their rights in their own languages, they can take the steps to stop the abuses of bad temp agencies.</p>	<p>See comments above.</p>	<p>None needed. Language additions discussed above.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>We support the recommendation that the regulations should require staffing agencies to provide both the job order and the notice of rights poster to workers in their own language.</p>	<p>DLS believes that the language as drafted is sufficient and in line with the statute. The department will provide the notice of rights in languages other than English and has already provided it in fifteen (15) languages, available on our website at <a href="http://www.mass.gov/dols/epsap">www.mass.gov/dols/epsap</a>. The department acknowledges that the TWRKL does not explicitly require a Staffing Agency to provide information about the job assignment to the worker in a specific language. Given that the intent of the notice is for a worker to have information about his/her job assignment, DLS will leave the requirement in the proposed definition of Job Order that the Job Order must contain a multilingual statement issued by the department that the information is important and that the worker should have the form translated.</p>	<p>None. See above pages 17-19.</p>
<p>We support the recommendation of the coalition that both the job order and the notice of rights be provided to workers in a language they understand. Without receiving the job order and notice of rights in a language they understand, workers cannot be said to have a meaningful “right to know.”</p>	<p>See above.</p>	<p>None. See above.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>The draft regulation allows the staffing agency to choose the method of delivering the written job order, thereby shifting the burden to the worker to request an alternative method after the worker is notified of the staffing agency’s method. This language is impermissible under the TWRKL, which clearly states that the employee chooses the method of transmittal. Therefore, the regulations should conform to the statutory language as follows: “The written Job Order as defined in Section 24.02 shall be transmitted using a method of transmittal designated by the employee, including by facsimile, electronic mail, first class mail, or by handing the Job Order to the Job Applicant or Worker.”</p>	<p>DLS disagrees that the language as proposed is impermissible under the Temporary Workers Right to Know Law.</p> <p>From a practical perspective, Staffing Agencies have informed the department that they need a default method of communicating Job Orders with their employees. Certainly, under the law, the worker has the right to designate the method of transmittal, and that right is preserved in the proposed regulation.</p>	<p>The wording has been rearranged to indicate that the employee has the choice, but the Agency may default to its method absent direction from the employee.</p>
<p>There appears to be a drafting error at 24.08(1) where it reads, “Notwithstanding the second clause in the first sentence of this subparagraph...” because there is not subparagraph. Also, allowing the Work Site Employer to hand the Job Order to the Job Applicant or Worker does not satisfy the requirement that each staffing agency provide each Job Applicant or Worker with the required information <i>before</i> each new assignment. Lastly, this method of transmittal should only be allowed if the worker has chosen said method.</p>	<p>DLS agrees that there is a drafting error noted and will correct that verbiage. DLS disagrees that allowing the worksite employer to hand the job order to the applicant or worker does not satisfy the law, because, the regulation still states that the staffing agency is responsible for compliance with the provisions of the TWRKL, and part of that is providing required information to an applicant or worker before each new assignment and confirming in writing the required information before the end of the first pay period. It is the written confirmation that the department is allowing a worksite employer to distribute.</p>	<p>24.08 <u>Information Required to be Furnished to Job Applicants or Workers by Staffing Agencies</u> change “Notwithstanding the second clause in the first sentence of this subparagraph...” to “Notwithstanding the first sentence of 24.08(1)...”</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>Any <i>material</i> changes to the Job Order should trigger a new written notice. Material changes would include any changes in compensation, any changes in the job description. A re-assignment by a Work Site Employer of a task to a Worker is a material change, because that different task could require different clothing, equipment, training, licenses, or different OSHA obligations on the part of the Staffing Agency and/or Work Site Employer. The example cited at the hearing of an early closing or a worker picking up an extra shift are material changes to a worker on a short-term assignment or a day-laborer.</p>	<p>M.G.L. c. 149, sec. 159C(b) lists the specific information that is required to be provided to Job Applicants and Workers, and the same section requires, "...that any changes to the initial terms of employment shall be immediately provided to the employee..." Therefore, the department interprets this to mean that any change to the information provided in the initial Job Order would trigger notification to the worker.</p>	<p>None.</p>
<p>We ask that only material/substantive changes to a job order are those which would trigger communication requirements to the worker by the staffing agency.</p>	<p>See above.</p>	<p>None.</p>
<p>During the course of an assignment, there may be changes that occur that are more temporary in nature and that do not affect the nature of the work or the job function to which the worker was assigned. These types of changes may be a temporary change in the work schedule or the opportunity for overtime. It would be helpful if the types of changes post-assignment that require notification and acknowledgement from the worker were only those which are permanent in nature and that really change the nature of the work being performed or the job or function of the worker.</p>	<p>See above.</p>	<p>None.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
Staffing agencies cannot know the unknowable. Employees who work directly for organizations don't know the duration of their work, because most are employees at will.	See above.	None.
We encourage you to require only that substantive changes be required to be communicated to the worker and not require an acknowledgement back. Gathering that acknowledgement is very challenging.	See above.	None.
The department should require that staffing agencies provide a copy of the Job Order to a Worker upon request by a Worker. We recommend the following be added to the last paragraph in section 24.08: "A Job Applicant or Worker may request, and the Staffing agency must provide, within 5 business days, a copy of the original job order and/or any written confirmation of changes to the job order at any time within the record retention period of three years."	Since the intent of the TWRKL is to provide information to workers, the department believes that this is a reasonable requirement and is in line with the state's personnel records review law within Chapter 149.	Add to 24.08 a subsection (6) reading: At any time within the record retention period of three years, a Worker may request and the Staffing Agency shall provide, within five (5) business days of the request, a copy of the original Job Order and any written confirmation of changes to the Job Order.
We support the recommendation that workers have the right to request and receive a copy of the job order and any changes to their job assignment, at any point in time.	See above.	See above.
We support the recommendation that staffing agencies be required to provide a copy of the original job order, and a written confirmation of any changes to the job order, upon the workers' request, at any point in time.	See above.	See above.

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>The department should require that Staffing agencies post the notice of rights in vans, as many workers do not go to a physical office of a staffing agency. This requirement could be added by adding to 24.08(2) the following sentence after the first sentence in this paragraph: “If a staffing agency or worksite employer or a person acting directly or indirectly in either’s interest offers transportation services, the staffing agency shall post the written notice of rights in a conspicuous place in each vehicle used for such service.”</p>	<p>Since the intent of the TWRKL is to provide information to workers and to notify them of their rights under the TWRKL, the department believes that this is a reasonable requirement and is consistent with the language of the TWRKL that the agency must post in a conspicuous place where it does business and with the transportation language: staffing agency, worksite employer, or a person acting directly in either’s interest.</p>	<p>In 24.08 <u>Information Required to be Furnished to Job Applicants or Workers by Staffing Agencies</u> add 24.08(9): “If a staffing agency or worksite employer or a person acting directly or indirectly in either’s interest offers transportation services, the staffing agency shall post the written notice of rights in English and in other languages as appropriate in a conspicuous place in each vehicle used for such service.”</p>
<p>We support the recommendation that staffing agencies be required to give a copy of the notice of rights to all workers and to post the notice of rights inside any vans used to transport their workers.</p>	<p>See above and below comments</p>	<p>See above and below.</p>
<p>The department should require all staffing agencies to provide a copy of the notice of rights to all workers—in addition to posting the notice in each location where the staffing agency does business. This could be accomplished by inserting the following sentence after the proposed second sentence in this paragraph: “Each staffing agency also shall provide to each Job Applicant or Worker a copy of the same written notice in the manner in which the Job Order is provided.”</p>	<p>While as a business practice this would be a recommended best practice by DLS, the department believes this requirement would go beyond the scope of the language of M.G.L. c. 149, sec. 159C, which specifies how the notice is to be posted and specifically references “locations” where it does business.</p>	<p>None.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>The department should require staffing agencies to post the notice of rights in languages that workers understand, similar to the existing requirement that employment agencies post the Employment Agency Statute, “in language which persons commonly doing business with such office can understand.” To address staffing agency concerns that this could be burdensome, the following sentence could be included at the end of the existing paragraph at 24.08(2): “Staffing agencies shall post the notice and provide the notice to Job Applicants and Workers in English and in a language understood by the Job Applicant or Worker, as made available by the Department.”</p>	<p>DLS believes that the language as drafted is sufficient and in line with the statute. The department will provide the notice in languages other than English and has already provided it in fourteen (15) languages, available on our website at <a href="http://www.mass.gov/dols/epsap">www.mass.gov/dols/epsap</a>. See also Discussion on pages 18-21.</p>	<p>None.</p>
<p>Having the posters in different languages would be tremendously helpful and we can even help with the coordinating of some of the translation.</p>	<p>See above.</p>	<p>None.</p>
<p>Please consider requiring the posting of the Notice of Worker Rights in the vans that are being operated for the benefit of the staffing agencies and/or worksite employers. The posters also need to be posted in languages that the workers understand.</p>	<p>See previous comments.</p>	<p>See previous changes to proposal.</p>
<p>We urge the department to require staffing agencies to provide the job order and notice of rights inside the vans that take temporary workers to their job site.</p>	<p>See previous comments.</p>	<p>See previous changes to proposal.</p>
<p>We support the recommendation that temp agencies should also be required to post the notice of rights inside the vans used to transport their workers.</p>	<p>See previous comments.</p>	<p>See previous changes to proposal.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>We urge the department to require that staffing agencies write their agency name and registration number on the notice of rights poster. This allows workers to have a simple screening tool to know the name of the agency if they wish to report a violation, and to recognize unlicensed or unregistered agencies when they are looking for jobs. The following language should be added to 24.08: “Staffing agencies shall write in large, black, legible print at the top of each notice posted and provided to Job Applicants and Workers 1) the licensed or registered name of the agency and 2) the license or registration number.”</p>	<p>While DLS believes this would be a good business practice, this goes beyond the scope of the TWRKL which requires that the notice be notice of an employee’s rights under M.G.L. c. 149, section. 159C. The staffing agency must provide the name of the staffing agency or contact information of the staffing agent.</p>	<p>None.</p>
<p>You have heard from workers that they don’t know the name of the staffing agency they work for. One way to address this should be to require the staffing agency to put their agency registration number on the notice of rights poster and the poster should be hanging inside every van.</p>	<p>See above.</p> <p>Workers should be receiving a Job Order with the Staffing Agency name under the TWRKL and these proposed regulations. To make a complaint, call the Department of Labor Standards at (617) 626-6970, or visit <a href="http://www.mass.gov/dols/epsap">www.mass.gov/dols/epsap</a>. This law is administered by the Department of Labor Standards (DLS) and enforced by the Office of the Attorney General’s Fair Labor Division. DLS investigates complaints and allegations of violations of M.G.L. c. 140, sections 46A-46R and M.G.L. c. 149, section 159C.</p>	<p>None.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>Appendix A should set forth all of an employee’s rights under M.G.L. c. 149, sec. 159C, which includes additional limits on transportation charges that are not included on the poster as drafted. The following language should be inserted before the “any item or service” bullet point in the list of bulleted items for which staffing agencies and work site employers cannot charge fees: “transportation services, if use of the service is required; if use of the transportation services is voluntary, the fee may not exceed 3% of daily wages or actual costs, whichever is less.”</p>	<p>DLS agrees that this language should be inserted onto the poster and will amend the poster accordingly.</p>	<p>Appendix A: The following language should be inserted before the “any item or service” bullet point in the list of bulleted items for which staffing agencies and work site employers cannot charge fees: “transportation services, if use of the service is required; if use of the transportation services is voluntary, the fee may not exceed 3% of daily wages or actual costs, whichever is less.”</p>
<p>There is also a need to notify temporary workers concerning the component of the legislation that limits transportation charges to 3% of daily wages or actual cost, whichever is less.</p>	<p>See above.</p>	<p>See above.</p>
<p>We support the recommendation that the notice of rights poster should clearly state that the law limits transportation charges to no more than 3 percent of daily wages or actual cost, whichever is less, even where the charges do not reduce wages below minimum wage.</p>	<p>See above.</p>	<p>See above.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>The TWRKL exempts professional employees, secretaries and administrative assistants from the disclosure requirements of M.G.L. c. 149, sec. 159C(b), but also to the posting obligation in 159C(b), so the draft regulations should have the same language in 24.08(1): “This subparagraph shall not apply to Professional Employees, Secretaries or Administrative Assistants.”</p>	<p>DLS agrees that professional employees, secretaries, and administrative assistants are exempt from having to receive the Job Order and the requirement to post a notice of rights in section 159C(b). To clarify the exemption, the language has been moved to a separate subsection. However, because staffing agencies are free to make any types of placements and assignments in any occupation, the only way to ensure that a staffing agency is complying with the notice requirement is to require all staffing agencies to post it. In addition, the notice requirement is required to advise employees of their rights under all of Section 159C, not just of subsection (b). The prohibited charges and activities outlined in subsection (c), (d), and (e) apply to all temporary workers, regardless of the type of job to which they are being assigned. The notice as provided by the department lists the rights and protections as contained within all of 159C.</p>	<p>Exemption language moved from 24.08(4) to new 24.08(7): Sections 24.08(1)-(6) shall not apply to Professional Employees, Secretaries or Administrative Assistants.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>Subsection (1) states that any changes to the terms in the Job Order will be sent to the applicant or worker in writing; however, the TWRKL does <u>not</u> mandate that such changes be made in writing. This subsection should conform to the statute and not require written notice. Practically speaking, changes in temporary assignments occur frequently, making written notice all but impossible. For example, during the July 4<sup>th</sup> holiday, many temporary workers were told on July 3<sup>rd</sup> that the business to which they were assigned would be closing early, thus reducing the workers; hours. Clients notified the workers directly of these changes, and no written notice was necessary or even possible in such case. In addition to being impossible to comply with, any such requirement would fundamentally change the flexible nature of the relationship for both worker and client alike. It is imperative that any final regulations not impose such written notice requirement.</p>	<p>DLS recognizes that the TWRKL does not mandate that changes to the initial terms of the Job Order be in writing, but it does require that a Staffing Agency provide any change “immediately” to the employee, and the employee “shall acknowledge the change in terms.” As a practical matter to ensure compliance, the department proposed that a requirement for the agency to provide the changed terms in writing by the first calendar day after the day that the change is known to the Staffing Agency would ensure the worker was given the information and the Staffing Agency would have proof of compliance. Given the objection, the department will remove the requirement, and Staffing Agencies will bear the burden of proving compliance with “immediately” notifying the worker of the change and an acknowledgement by the worker of the change in terms.</p>	<p>Section 24.08 <u>Information required to be Furnished to Job Applicants or Workers by Staffing Agencies</u>  24.08(1): Change the second-to-last sentence to read: “Any changes to the terms of employment or assignment contained in the Job Order shall be immediately provided to the Worker by the same method in which the initial Job Order was transmitted.”</p>
<p>Similarly, the regulations should clarify that worker acknowledgement of changes may be inferred from the worker’s continued work on the assignment after any such change has been imposed. Any additional acknowledgement burden would be impractical given the often-changing fluid nature of assignments.</p>	<p>The statute says the employee shall acknowledge the change in terms. Simply staying on the job is not an acknowledgement as it does not make clear what information was actually given to the worker or that the worker received any information. The regulation addresses the statutory requirement.</p>	<p>None.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>Whatever method of communicating the initial job order information to a worker should be the same means by which a staffing agency communicates a change to a job assignment. The TWRKL says that changes need to be communicated but it does not say that has to be in writing, and in the draft regulation it says that any changes have to be confirmed in writing and send to the Job Applicant or Worker. The requirements of the law and the regulation should mirror each other.</p>	<p>Job Orders need to be confirmed in writing and sent to an employee in a method designated by the employee, before the end of the first pay period.</p> <p>See comments above regarding changes.</p>	<p>See above.</p>
<p>Regarding the secondary notification, our business is dependent upon the flexibility and fluidity of our workforce. If a client wants to have a good worker work overtime, and the employee wants to work the overtime, the employee should just be able to accept that and not have to go back to the staffing agency so the staffing agency then has to generate communication to the employee; it slows the whole process down.</p>	<p>M.G.L. c. 149, section,159C(b) requires that changes to the initial Job Order shall be immediately provided to the employee and the employee shall acknowledge the change in terms.</p>	<p>See above.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>Being in the light industrial area, a lot of our field associates are working a second or third shift or a weekend shift, when we are not necessarily in the office. So our clients work directly with our field associate asking they'd like to work overtime, or if they don't have work that needs to be done, they send them home. It would be hard to keep the change in work assignment up to date because of this. Also, for a lot of our client companies in production, it's important for workers to be nimble, so they cross-train our associates, and if one area like shipping gets busy, they need workers to go and assist in putting boxes together and shipping out product. The company is directing this, so it would be difficult to keep up with changing the job order.</p>	<p>M.G.L. c. 149, section, 159C(b) requires that changes to the initial Job Order shall be immediately provided to the employee and the employee shall acknowledge the change in terms.</p>	<p>See above.</p>
<p>I am not sure why the regulation stipulates that the worker has to acknowledge the change in his/her assignment but it does not require this for the initial job order.</p>	<p>M.G.L. c. 149, section, 159C(b) requires that changes to the initial Job Order shall be immediately provided to the employee and the employee shall acknowledge the change in terms. The statute does not have this acknowledgement provision for the initial Job Order but the Order must be confirmed in writing before the end of the first pay period.</p>	<p>None.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>We cannot post the TWRKL notice of rights at our client sites because we don't control those sites. This should be clarified in the regulation.</p>	<p>The TWRKL at Section 159C(b) requires a staffing agency to, "post in a conspicuous place in each of its locations where it does business notice of an employee's rights under this section and the name and telephone number of the department." DLS requires that all Staffing Agencies shall post the notice of rights in each of the locations where the Staffing Agency operates its business of procuring or attempting to procure help or employment or engagements; or registering individuals seeking such help, employment, or engagement, or giving information as to where and of who such help, employment, or engagement may be procured. This does not include client worksites if the Staffing Agency's only activity at that site is the presence of a worker(s) sent to the worksite to perform his/her assignment(s).</p>	<p>None needed.</p>
<p>We do not believe that it is necessary to post the TWRKL notice of rights at client locations as the staffing agency is the employer or record and employees can receive a copy of the poster at any time from the staffing agency.</p>	<p>See above.</p>	<p>None needed.</p>
<p>It would be appreciated if it could be clarified where the posters need to be posted. We don't control our client's sites, and many of our client's sites have restricted access, such as government facilities.</p>	<p>See above.</p>	<p>None needed.</p>
<p>With regard to posting the notice of rights at client worksites, I equate this to UPS. UPS is a vendor at the client's site. It's hard to imagine UPS would be required to post something at their client sites.</p>	<p>See above.</p>	<p>None needed.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>If you'd like all temporary workers to have access to the notice of rights, make that a requirement of all employers in the state. If you require it as part of any employer's notification, you'll be accomplishing the goal of getting the poster posted at client sites, and not asking a staffing agency to do something that it does not have control over (the client sites).</p>	<p>See above.</p>	<p>None needed.</p>
<p>Regarding subsection (2), it has been brought to our attention that some have taken the position that the TWRKL notice must be posted in any transportation vehicles furnished by staffing agencies. This requirement is not in concert with the proposed regulation, as staffing agencies do not "do business," in any conventional sense of that term, in such vehicles. Rather, they do business in their offices, where the notice must be posted. Further, we understand that some have stated that the notice should be posted at client sites. Staffing agencies do not control client' worksite and have no way of posting the notices. Furthermore, staffing agencies themselves do not do business at the client sites, although workers are assigned there. Staffing agencies' places of business are their own, and not their client's offices. No other laws require employers to post notices at third party client sites. Therefore, this section should make clear that the notice must be posted in the office in which the staffing agency recruits and hires workers, and from which it assigns them. Should the department seek to impose a notice requirement on clients, it may seek to do so through new legislation; however, the TWRKL does not authorize such as requirement.</p>	<p>See previous comments.</p> <p>As noted above at page 25, since the intent of the TWRKL is to provide information to workers and to notify them of their rights under the TWRKL, the department believes that it is within the intent of the statute to require posting in transportation vehicles if a staffing agency or worksite employer or a person acting directly or indirectly in either's interest offers transportation services. This is a reasonable requirement for reaching the workers and is consistent with the language regarding posting in a conspicuous place where the agency does business and transportation.</p>	<p>See previous changes to proposal.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>I am a temporary worker and in the time I have worked, I have never received a notice telling me what I am supposed to be doing, how much I will be paid, and who I am being employed by. I often have money taken from my paycheck. I also don't know who to ask if I have questions or problems with my assignment because there is no contact person.</p>	<p>To make a complaint, call the Department of Labor Standards at (617) 626-6970, or visit <a href="http://www.mass.gov/dols/epsap">www.mass.gov/dols/epsap</a>. This law is administered by the Department of Labor Standards (DLS) and enforced by the Office of the Attorney General's Fair Labor Division. DLS investigates complaints and allegations of violations of M.G.L. c. 140, sections 46A-46R and M.G.L. c. 149, section 159C.</p>	<p>None needed.</p>
<p>Where I work, I understand that night shift workers are supposed to be paid more than the day shift workers, but right now, we are all being paid the same.</p>	<p>See above.</p>	<p>None needed.</p>
<p>In the areas where I work, we have several agencies that have changed names four to five different times. We see workers being paid in cash to evade a paper trail. We have agencies that force workers to change their names, so how can that be reported on our taxes? We are being victimized by wage theft and high transportation costs associated with being transported to work. We need stronger enforcement.</p>	<p>See above.</p>	<p>None needed.</p>
<p>We hope that the regulations that are passed will give the Department as much latitude as possible to deal with new situations that arise within the temporary staffing industry. We have seen temporary agencies essentially laundering payroll.</p>	<p>See above.</p>	<p>None needed.</p>
<p>I work for a temp agency and they pay me in cash, even though I asked them to pay me with a check.</p>	<p>See above.</p>	<p>None needed.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
We are not only temp workers but we are also mothers, we have children, and we have our own responsibilities. We need to know what type of work we will be doing and whether we need training.	See above.	None needed.
If you are undocumented, you are given harder jobs. Jobs that require heavy-lifting, etc.	See above.	None needed.
In our industry, hotels are increasingly firing long term workers and replacing them with temp workers earning minimal pay, with minimal training...no one is educating them about their rights and people are abused. We need the government to do more to protect them. Make sure the regs preserve the broad definitions and language of the statute.	See above.	None needed.
Some of the vans that are picking up workers are unsafe because there are too many people made to go into the vans. Some of the van drivers don't have licenses. Perhaps we need to work with the department of transportation about any regulations they might have in this regard. Also, a lot of the vans act like they are separate from the temp agencies but they are not.	The department works collaboratively with many state and federal agencies where areas of jurisdiction extend beyond our bounds of authority. DLS can engage the relevant agency for unsafe transportation issues but needs specific information about the situation. To make a complaint, call the Department of Labor Standards at (617) 626-6970.	None needed.

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>In Section 24.10 <u>Provisions and Restrictions Relating to Charges by Staffing Agencies and Work Site Employers</u>: The first sentence of this paragraph refers to “a person acting directly or indirectly in either’s interests.” This use of the term “person” conforms to the statutory language in the TWRKL but the proposed definition of “person” in Section 24.02 impermissibly narrows its meaning.</p>	<p>Definition has been changed.</p>	<p>See above page 7.</p>
<p>Missing from the paragraph at 24.10(1) is important statutory language: “No staffing agency or work site employer of a person acting directly or indirectly in either’s interest shall deduct any costs or fees from the wages of an employee without the express written authorization of the employee. A staffing agency or work site employer shall furnish to the employee a copy of the signed authorization in a language that the employee can understand.” M.G.L. c. 149, sec. 159C(c). This language should be added with the additional explanation that express written authorization does not make an unlawful deduction lawful. See M.G.L. c. 149, sec. 148. This can be accomplished by adding the following sentence at the end of the paragraph: “Written authorization does not make a deduction lawful if it is otherwise unlawful.”</p>	<p>DLS acknowledges that the referenced statutory language is missing from the proposed draft and will add it accordingly.</p> <p>The suggestions to add a sentence that written authorization does not make an otherwise unlawful deduction lawful will also be added in order to clarify and harmonize the contents of subsection 1.</p>	<p>In Section 24.10 <u>Provisions and Restrictions Relating to Charges by Staffing Agencies and Worksite Employers</u>. 24.10(1) add: “No staffing agency or work site employer of a person acting directly or indirectly in either’s interest shall deduct any costs or fees from the wages of an employee without the express written authorization of the employee. A staffing agency or work site employer shall furnish to the employee a copy of the signed authorization in a language that the employee can understand.”</p> <p>Add as the last sentence in 24.10(1): “Written authorization does not make a deduction lawful if it is otherwise unlawful.”</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>The list of unlawful deductions in 24.10ould include deductions prohibited under M.G.L. c. 149, sec. 150, which prohibits set-offs other than valid set-offs and also prohibits “the assignment of future wages.” This should be inserted at the end of the second sentence in this paragraph as follows: “...and any other deductions prohibited by M.G.L. c. 151 and its regulations and M.G.L. c. 149, sections 148 and 150.”</p>	<p>Language has been added regarding deductions. See discussion pages 1 and 36 above.</p>	<p>Language added, see pages 1 and 36.</p>
<p><u>In 24.14: Record-Keeping Requirements.</u> In subsection (1) the term “accepted” job applicant or worker is ambiguous. Since this section requires maintenance of Job Orders and Client Work Orders, among other things, this section should make clear that accepted job applicants or workers are those who have been placed on assignment or in jobs with clients.</p>	<p>“Job Applicant” and “Worker” are defined terms. The Employment Agency statute does refer to information that must be provided and kept for each “applicant” for employment at section 46I. The definition of “Job Applicant” is modified to reflect that it applies to individuals the agency has referred or recommended.</p>	<p>Modify 24.02 <u>Definitions</u>: “Job Applicant”: an individual who an agency has referred or recommended for employment, engagement, a work assignment, or a job.</p>
<p>The term “accepted job applicant or worker” is not clear. Does it apply to workers an agency may speak with and consider suitable for future placement, or workers who are actually placed on assignment. At what point of a recruitment process does a candidate become an accepted job applicant or worker subject to the record-keeping requirement of this section?</p>	<p>See above.</p>	<p>See above.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>Some of the applicant records prescribed in the draft might go beyond what is even practical. Maintaining a personal or professional reference for a job applicant gets in the way of a job for people that don't have references. Also, requiring a staffing firm to have reference is outside of what the statute requires, as are some of the client records requirements.</p>	<p>The department acknowledges that, while it is certainly a recommended business practice, the Employment Agency Law only requires employment agencies placing domestic employees to maintain reference checks on applicants. The client work order has been changed to "bona fide order" and the requirements modified as described at page 2.</p>	<p>In Section 24.14 Record-Keeping Requirements, strike 24.14(1)(c). See page 2 regarding client work order.</p>
<p>Is the intent of this section to remove the discretion in terms of when we obtain references? Consideration should be made to the type of skill being sought, the nature of the assignment, and the duration of the assignment. We ask that you do not require references but recommend them as a best practice.</p>	<p>See above.</p>	<p>See above.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>The proposed transportation section at 24.15 replaces the word “person” with the word “Individual.” The purpose of this substitution was likely to avoid the use of the term “Person” because “Person” is defined in the regulations using the Employment Agency Statute definition. The term “individual” however, is impermissibly narrow because it fails to encompass business entities that may offer transportation services while acting directly or indirectly in the interest of an agency or worksite employer. A simple solution is to add the recommended clarity to the definition of “Person” as suggested in the comments to 24.02 and to replace “individual” with “person” in this section. This section should be revised as follows: “If an Agency or Work Site Employer or a person acting directly or indirectly in either’s interest offers transportation services that the Temporary or Part-time Workers may utilize, the Agency or Work Site Employer of a person acting directly or indirectly in either’s interest is prohibited from charging more than the actual cost of each Worker’s transportation or 3% of the Worker’s daily wages, whichever is less. The transportation charge shall not reduce the Worker’s total daily wages below the applicable minimum wage earned for that day. If an Agency or Work Site Employer or a person acting directly or indirectly in either’s interest requires the use of transportation services, there shall be no charge or cost to the Job Applicant or Worker. Any Agency that sends a Job Applicant or Worker to a Work Site Employer to work where, in fact, no work exists, shall fully refund any reasonable costs of transportation expended by the Job Applicant or Worker within seven calendar days of the date the Job Applicant or Worker was sent to the Work Site.</p>	<p>DLS acknowledges this oversight and will amend the proposed regulation in accordance with the statutory language.</p>	<p>Section 24.15: <u>Limitations on Transportation Expenses Charged by Work Site Employers and Agencies.</u>  Change to read: “If an Agency or Work Site Employer or a person acting directly or indirectly in either’s interest offers transportation services that the Temporary or Part-time Workers may utilize, the Agency or Work Site Employer or a person acting directly or indirectly in either’s interest is prohibited from charging more than the actual cost of each Worker’s transportation or 3% of the Worker’s daily wages, whichever is less. The transportation charge shall not reduce the Worker’s total daily wages below the applicable minimum wage earned for that day. If an Agency or Work Site Employer or a person acting directly or indirectly in either’s interest requires the use of transportation services, there shall be no charge or cost to the Job Applicant or Worker. Any Agency that sends a Job Applicant or Worker to a Work Site Employer to work where, in fact, no work exists, shall fully refund any reasonable costs of transportation expended by the Job Applicant or Worker within seven calendar days of the date the Job Applicant or Worker was sent to the Work Site.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p><u>Limitations on Transportation Expenses Charged by Work Site Employers and Agencies.</u>  Section 24.15 has impermissibly revised the statutory wording found in Section 159(C)(d) of Chapter 149. The statute reads, “If a staffing agency or work site employer or a person acting directly or indirectly in either’s interest offers transportation services...” The proposed regulation states, “If an Agency or Work Site Employer offer transportation services...” This subtle shift in the proposed regulations impermissibly narrows the law by limiting coverage to transportation offered by the agency or worksite employer, impliedly excluding persons acting directly or indirectly in either’s interest. The broad nature of the words “or a person acting directly or indirectly in either’s interest indicates that the legislature intended to encompass a wide range of transportation arrangements where the provision of transportation serves the interest of either the staffing agency or the worksite employer at a specific time, which serves the interests of both the staffing agency and the worksite employer.</p>	<p>See above. Changes have been made to the definition of “person” and to the transportation section.</p>	<p>See above.</p>
<p>My business was providing transportation but it was apparently in violation of the law. Now that we don’t provide it, we have fewer workers; they don’t come to us anymore.</p>	<p>Limitations on transportation charges for temporary workers has been in existence in Massachusetts since the early 2000s.</p>	<p>None needed.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>I own an agency and used to have a van. I would charge workers \$5.00 to get a ride to a job 17 miles away. Workers who had their own cars would use the vans because if they had to take their own cars, it would cost them more in gas than \$5.00. But I found out that was illegal because it brought the workers below minimum wage. We've lost employees because we don't provide the van transportation.</p>	<p>See above.</p>	<p>See above.</p>
<p>Section 24.16: <u>Inspections Conducted by the Department</u>. Any interviews of clients should be for cause, as determined by the department. While we do not expect that the Department will interview clients unless necessary, this condition should be included in this subsection.</p>	<p>DLS' inspection and enforcement authority is set forth in the Employment Agency, TWRTK, and other laws. DLS exercises its authority with attention to minimizing disruption to proper business operations and relationships. The DLS will not limit its authority beyond that set forth in existing statutes.</p>	<p>None.</p>
<p>Section 24.17: <u>Complaints</u></p> <p>Subsection (1) should explicitly reference complaints regarding violations of the TWRKL and EA Law only, as these are the authorities for the issuance of these regulations.</p>	<p>DLS disagrees with this comment. "Complaint" is a defined term under the <u>Definitions</u> section of the proposed regulation that specifies the parameters of complaints as being those related to activities within the purview of the Employment Agency Statute, Temporary Workers Right to Know Law and the regulations promulgated thereunder. "Complaint" is used throughout section 24.17.</p>	<p>None.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>Section 24.18: <u>Revocation, Suspension of License</u></p> <p>The EA Law allows for revocation after a hearing only, and does not allow for revocation merely after inspection or investigation.</p>	<p>DLS disagrees with the comment. M.G.L. c. 140, Section 46Q allows the commissioner to suspend or revoke the license of any employment agency if it fails to furnish required information or hinders or interferes with any authorized person performing his or her duties under the statute. A license may be suspended or revoked after a hearing in cases where there is a complaint.</p>	<p>None needed.</p>
<p>Section 24.21: <u>Confidentiality</u></p> <p>This section provides for the confidentiality of employment agency information, but does not provide for confidentiality of placement agency information—such information also should be confidential.</p>	<p>DLS disagrees with the comment. As proposed, it is clear that information secured pursuant to the Employment Agency Statute (of which placement agencies are a part) is confidential, notwithstanding the information that this section allows to be disclosed. Upon further reviewing this section, however, the Department will make one additional change to permit DLS to disclose publicly whether the Agency is a staffing agency.</p>	<p>In section 24.21, <u>Confidentiality</u>, add, “and whether the Agency is a staffing agency as defined in G.L. c. 149, section 159C.”</p>
<p>The bad businesses in the temporary staffing industry do not represent the entire staffing industry which respects and values its workers, so please do not write these regulations with the idea that all staffing agencies are rogue businesses that don’t pay workers, don’t pay taxes, and mistreat their workers.</p>	<p>DLS does not write these regulations with a view that an entire <i>industry</i> is an industry that exploits workers. There are dynamics within the nature of the business model that require that all workers are given added protections.</p>	<p>None needed.</p>
<p>Our agency successfully utilizes technology to help meet the legislative mandates of the TWRKL, and we partner with our clients to ensure that the worksite where we send workers is a safe one.</p>	<p>DLS acknowledges that many temporary staffing agencies in Massachusetts operate model businesses and provide gainful employment opportunities for tens of thousands of workers.</p>	<p>None needed.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>We impact the lives of over 200,000 workers through gainful and meaningful employment, and we provide a choice and flexibility that many people need at certain points in their lives.</p>	<p>DLS acknowledges that many temporary staffing agencies in Massachusetts operate model businesses and provide gainful employment opportunities for tens of thousands of workers.</p>	<p>None needed.</p>
<p>I see workers being picked up at sites and not knowing where they are going or who they are working for, and winding up at construction sites. These workers should be given information in the language that they understand.</p>	<p>The TWRKL is intended to address this very issue. Specific information about worksites where this is occurring should be forwarded to DLS for investigation.</p>	<p>None needed.</p>
<p>I see a lot of workers' compensation premium evasion going on in the construction industry and that is a way that businesses cheat.</p>	<p>DLS, through its work with the Joint Task Force on the Underground Economy and Employee Misclassification, is all-too aware that workers' compensation premium evasion is a way for businesses to cheat. Specific information about where this is occurring should be reported to 1-877-96-LABOR.</p>	<p>None needed.</p>
<p>I think that workers in construction and factories should know that material safety data sheets exist for the chemicals that they are working with. They might not even know that such information is supposed to be available to them.</p>	<p>The Occupational Safety and Health Administration (OSHA) requires that employers must ensure that Safety Data Sheets (SDS) are readily accessible to employees for all hazardous chemicals in their workplace. According to OSHA, this may be done in many ways. For example, employers may keep the SDSs in a binder or on computers as long as the employees have immediate access to the information without leaving their work area when needed and a back-up is available for rapid access to the SDS in the case of a power outage or other emergency. Questions or concerns should be addressed to: 1-800-321-OSHA (6742)</p>	<p>None needed.</p>

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
There have been home care agencies operating without a license. How can they be reported so that they can be investigated and shut down?	Massachusetts does not issue a “home care agency” license. Many home care agencies have received an employment agency license or placement agency registration. These proposed regulations clarify that agencies placing domestic employees, as defined, are required to be licensed as employment agencies or registered as placement agencies. Specific questions about agencies operating without a license should be directed to 617-626-6970.	None needed.
Enforcement is the key to making this law work.	DLS agrees with this comment and has staff who are dedicated to inspecting and investigating employment, placement, and staffing agency activities. DLS also remains in close communication with the Office of the Attorney General’s Fair Labor Division about TWRKL matters of enforcement.	None needed.
At what point does a temporary worker become a permanent worker if they stay on the same job site for a long period of time?	Under the Employment Agency Law, employment is permanent if it is good for ten weeks or more, and temporary if it is good for less than ten weeks. The Temporary Workers Right to Know Law does not address this issue and DLS is unaware of any legal requirement regarding length of assignment and status as a “temporary worker.”	None needed.
A lot of temporary workers are not going to come forward and talk to a government agency, so there should be other avenues for workers to go to if they have a problem or question.	Worker centers and other advocacy institutions are non-governmental organizations with which DLS works to learn information about concerns among temporary workers. Complaints and questions may be filed with DLS through intermediaries, provided enough information is given for follow-up.	None needed.

<u>COMMENTS</u>	<u>DISCUSSION</u>	<u>CHANGE TO PROPOSAL</u>
<p>When talking about these issues regarding temporary work, these are issues of transparency and providing a framework through which companies or individuals can engage in ethical relationships, so things like notices or posters that simply give information simply allow people to advocate for themselves or to make critical judgments.</p>	<p>DLS agrees that this is the intent of the TWRKL and has strived to draft these regulations in a manner which embodies the spirit and letter of the laws while not being onerous to the regulated industry.</p>	<p>None needed.</p>