The national unemployment rate has dropped to 5.4% – the lowest it has been since 2008. With smaller applicant pools vying for temporary positions, companies are frequently turning to staffing agencies to help fill employment gaps when needed. These arrangements are often convenient and can provide quick solutions to meet temporary employment demands. Furthermore, clients are able to get the help they need without taking on the risk or cost of a full-time employee. However, due to the ease and simplicity of using a staffing agency’s services, clients often fail to give proper attention to the contracts involved. It is important to note that there are serious insurance and government implications to consider when hiring temporary employees. Clients should always have a formal contract in place, whether it is provided by the staffing agency or the hiring organization itself, and a critical review of that contract should be performed prior to signing on the dotted line.

**Questioning the Contract**

Contracts between staffing agencies and clients should address a host of issues, including the hours to be worked by the temporary employee, the wages to be paid and the cost for the staffing services. Beyond those parameters, it is also important for contracts to address insurance policies, motor vehicle liability and training / safety policies. The following list will detail a number of questions that should be asked before any staffing contract is signed.

**What does the contract say about workers’ compensation for a temporary employee?**

The temporary staffing agency should provide workers’ compensation for the temporary employee. That policy should be written to meet the statutory requirements of the state of employment and should include an Alternate Employer Endorsement in the client’s name. The policy should also include a Waiver of Subrogation in the client’s favor. Coverage availability of those endorsements will vary by state or if operations are in a monopolistic state. Clients will need to obtain a certificate of insurance from the staffing agency verifying its workers’ compensation coverage, and this should be retained for workers’ compensation audits. Without the certificate of insurance, a client’s insurance auditor could charge the full cost for the temporary worker in the workers’ compensation policy.

**What does the contract say about general liability coverage provided by the staffing agency?**

Work performed or products produced by temporary workers should be covered under the client’s general liability policy, just as if they were performed or produced by permanent employees. Clients should still require staffing agencies to carry their own general liability policies and that they name the client as an additional insured on that policy.

**Can temporary employees drive client-owned vehicles?**

Anyone can drive a client’s vehicles with permission, but the staffing contract should stipulate that the agency is required to run motor vehicle reports that are shared with the client before any temporary workers are allowed to operate vehicles. Individuals driving company vehicles should be made aware of the client’s auto safety policies and have the appropriate training or license to operate those vehicles. The contract should require the staffing agency to carry auto insurance on its own policy as well.

**Is there an indemnity agreement or hold harmless agreement in the client’s favor?**

There are numerous employment risks that may not be addressed with traditional insurance policies, and there may be times when a temporary employee is found to be an employee of the client in court, under employment law. Clients are often left wondering who is responsible in a case of discrimination or sexual harassment by or against a temporary employee. Policy forms and court decisions can vary greatly, so the best defense may be in the form of a good indemnity or hold harmless agreement that would transfer those types of employment law risks back to the staffing agency. A client’s legal counsel should be consulted on indemnity wording to be sure it complies with state law and adequately addresses the exposure. If the staffing agency is supplying the contract, clients should carefully review it to ensure the agency isn’t pushing the indemnity or hold harmless agreement back on the client.
Is the staffing agency responsible for training and safety?

Staffing agencies may provide general safety and health training, but specific job training needs to be provided and documented by the client, just as would be required for a permanent employee. OSHA has recognized the increased use of temporary workers and that such workers are often poorly trained for the jobs being performed. As a result, OSHA is on the lookout for temporary workers and may want to review contracts with staffing agencies to see what is documented in terms of responsibility for completing OSHA 300 logs, as well as providing personal protective equipment and job site safety / training. OSHA does expect employers to treat temporary employees the same as they do permanent employees.

How can temporary employees be added to a company’s OSHA 300 log when they aren’t employees of the host company or covered by its workers’ compensation?

When a worker is injured on a client’s premises, OSHA expects the client to report the incident on its OSHA 300 log. The client is also responsible for following up with the staffing agency to determine the extent of the injury, the amount of lost time, light duty restrictions and any other information that should be noted. The client must be able to demonstrate that a good faith effort was made to accurately report the injury. Even if the contract with the staffing agency states that the agency will report the injury on its OSHA log, the client is still responsible for reporting any injuries that occur onsite such as fatalities, amputations (including tips of fingers), loss of an eye or hospitalization.

Am I responsible for providing health insurance to a temporary worker?

The Affordable Care Act (ACA) does mandate that certain size employers, even staffing firms, offer health insurance to their employees. However, the risk still exists that a temporary employee is not protected under a policy and a client could be held responsible for health insurance or the related penalties. Clients should ensure contracts with staffing agencies specify which party is responsible for health insurance for temporary employees.

Ready to Sign?

Temporary workers fill an important need in today’s labor market, and staffing agencies can be a great resource to connect those workers with companies seeking their skills and talents. As illustrated in this article, it is important for clients to perform proper due diligence prior to entering any binding contracts with staffing agencies. Failure to do so could turn a short-term employment arrangement into a long-term problem. For assistance with your temporary employment contracts, consult your Risk Management Team.

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