

Temporary Labor and Legal Challenges for Staffing Resulting from COVID-19

As the coronavirus pandemic continues to negatively affect businesses across the United States, many companies are facing staffing shortages. In order to fill staffing gaps, an increasing number of companies are utilizing the services of staffing agencies. For temporary laborers and the staffing agencies that place them, there are significant challenges looming on the horizon. For staffing agencies, one of these challenges is centered on general and professional employment liability. Agencies have a basic duty to verify that reasonably safe work accommodations are available for their temporary employees; in the wake of the highly contagious coronavirus, protecting temporary employees from illness becomes a greater concern.

Employee Safety: Health and Hygiene Challenges

Employers face a wide range of challenges in the wake of the global pandemic. The spread of the novel coronavirus responsible for COVID-19, a severe respiratory disease, has created a need across industries for hygiene protocols. Some companies require their employees to undergo routine health evaluations, including body temperature checks and questionnaires about potential COVID-19 symptoms. Other companies may require all on-site employees to wear protective equipment like masks, gloves, or face shields. Temporary staffing agencies often have their own hygiene protocols in place, while others have had to scramble to implement such protocols as a means of reducing employment liability exposures. Development and communication of agency and workplace hygiene protocols, then, is of extreme importance as temporary laborers are placed with companies. Basic protocols should include:

- Handwashing practices
- Cough/sneeze etiquette
- Protective equipment requirements
- Staying home if symptoms of illness arise

It is this latter protocol that should be of real concern to employers and staffing agencies. If a worker has financial needs, he or she may be tempted to continue working even with an illness. From an employment liability perspective, this can be devastating, potentially spreading infection to others.

Sick Leave and Illness Reporting Policies

Due to the highly contagious nature of the coronavirus, a single infected individual in a workplace can spread the virus to many others. In addition to encouraging employees who feel ill to stay home—helping to curtail the spread of viral pathogens—many companies may need to revisit their existing sick-leave and illness-reporting policies.

Temporary staffing agencies are no different. Encouraging employees to stay home if they feel sick is only one part of the employment liability management puzzle; implementing or temporarily modifying existing sick-leave policies is another.

One factor that bears scrutiny from a legal perspective is that of asking employees about their medical histories. There are many regulatory prohibitions in place regarding the collection of employee medical histories, although there are exceptions for direct threats to the workplace or workforce. The coronavirus infection can be considered a direct threat, according to employment attorneys, particularly in terms of staffing levels and business continuity. Still, employers and staffing agencies must be careful not to overstep regulations regarding medical questions.

Contractual Clauses for Employment Liability

The final challenge for staffing agencies is this: What if an agency is unable to provide a sufficient number of employees to a client due to widespread illness? What effects might that have on employment liability? One way to protect the agency from risk exposures is to ensure the inclusion of a *force majeure* clause in employment contracts. *Force majeure* is a common clause, freeing all parties in a contract from liabilities or obligations when an unforeseen event, including epidemics and pandemics, occurs. With this clause in place, staffing agencies are better protected from breach of contract claims, helping to manage employment liability.

Summary

The coronavirus pandemic has created many challenges for employers, and those challenges may evolve as time goes on. For now, implementing policies, protecting the health of employees, and reviewing contracts can help manage some of the risks employers face.

Sources

"Temporary Labor Challenges: Compliance With the Law in the Age of COVID-19." Staffing Industry Analysts (SIA), Crain Communications Inc., March 20, 2020, www2.staffingindustry.com/site/Editorial/Daily-News/Temporary-labor-challenges-Compliance-with-the-law-in-the-age-of-Covid-19-53197.

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