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# The Temporary Worker Conundrum

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## **THE TEMPORARY WORKER CONUNDRUM**

By: Christopher A. Tinari, Esquire

The present labor market continues to show a trend by employers to utilize contingent or temporary workers. This presents possible risks for the employer when faced with litigation. Employers around the country are now seeing multitudes of problems associated with utilizing temporary staffing agencies and the temporary worker.

Still, employers continue to utilize temporary workers to save on payroll administration and benefits, time savings in recruiting full time qualified individuals, and the subconscious understanding that the temporary worker does not enjoy the same privileges and rights as a full time employee.

When a temporary worker commits an illegal act resulting in harm to others, the question becomes who is responsible? Most often, the temporary staffing agency and the employer blame each other, and deny liability on behalf of the temporary worker.

Employers should be certain to place an importance on understanding the temporary worker relationship and how to minimize risk associated with the temporary worker:

1. The employer should be certain to include an indemnification clause in the agreement with the staffing agency so that it must defend and hold harmless the employer for any loss that results from the temporary worker's actions;
2. The employer should require the staffing agency to carry the appropriate insurance for the temporary worker and have the employer listed as the additional insured on the policy of insurance;
3. The employer should mandate that the staffing agency conduct thorough background checks for all temporary workers, provided however, the employer also mandates such checks on its own full time employees;

Depending upon the circumstances, the employer and staffing agency may be found to have enough authority over the temporary worker to be deemed an employer, and therefore, liable for any wrongdoing of the temporary worker.

Accordingly, the employer can pursue efforts to minimize its potential exposure:

1. The employer should require a specific written job description for the temporary worker with terms of the assignment;
2. The employer should not establish terms of employment, compensation, or benefits with the temporary worker;
3. Temporary workers should not be required to undergo the same hiring process afforded to full time employees and the staffing agency should be required to make all decisions related to hiring including background checks, drug checks, credit checks etc.;
4. The employer should set a specific time frame for the temporary worker's assignment or tenure;
5. The employer should never refer to the temporary worker as an "employee" but rather assign duties to the temporary worker on a "temporary basis";
6. The employer should not allow the temporary worker to possess business cards, participate in employer sponsored social events or be listed in an employer's directory.

The risk of litigation will continue to exist when an employer utilizes a temporary worker, however by taking the above steps, an employer's risk of litigation may be avoided or minimized.

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