

# Professional Staffing



## Professional Staffing Basics for Business Owners

by Sue Bendavid, Esq.

With the end of summer it's time for many industries to begin gearing up for fluctuating workloads, especially during the winter holiday season. That often means a rush to find temporary help.

Working with a professional staffing agency is one good option as it's financially feasible for companies not quite large enough to afford year-round staffing of full time workers.

As a business owner you may have additional benefits to hiring temporary workers through an agency. Here are some points you should remember when it comes to hiring temporary help.

First, we recommend you engage the services of a professional staffing company rather than hiring temps as "independent contractors" yourself. It will cost you a little more in terms of paying a worker's wages, but you'll receive more legal protection if you let another company cut the checks and assume certain responsibilities.

Significantly, workers cannot simply be labeled as "independent contractors" to avoid the legal requirements associated with hiring employees (tax withholdings, workers compensation, wage and hour compliance, etc.). Whether someone is or is not an "independent contractor" requires an analysis of numerous factors, including the extent of the business owner's right to control how the worker performs his/her duties.

Generally, the more right you have to control how

the work is to be performed, the more likely the individual performing that work will be your employee. Using a professional staffing agency for your temporary workers often reduces the risk of exposure on these issues as workers will be correctly characterized as employees.

If you do hire temps, be sure the temporary employee understands whether he or she will be entitled to certain employee benefits. Often employers will limit company-sponsored benefits to regular full time employees of the business, such that temporary workers are not entitled to participate in the company's 401k plan, health coverage, paid vacation time or other benefits. Any such limitations on benefits should be clearly written in company policies, such as in the company's Employee Handbook.

Avoid employing "permatemps." Microsoft learned this lesson the hard way when it was sued in a class action brought by "temporary" employees who worked for such long periods of time (over two years in most cases), they claimed they were entitled to the same benefits as Microsoft's full-time employees. The Court ruled in favor of the thousands of Microsoft "permatemps" which ultimately resulted in a huge payout for the workers after eight years of litigation. After the Microsoft case, many employers smartly began limiting temps to a duration of six months or less.

Remember that employees hired by you through a professional staffing company are generally considered

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to have two employers (you and the staffing agency). As a business owner, you do not relinquish your obligations to comply with employment laws and have certain obligations and responsibilities to temporary employees, as does the staffing agency. This often comes into play when there are problems with alleged harassment, discrimination or whistleblower claims, and also with wage claims like missed meal and rest breaks. Even though you may be paying an agency so that you can avoid troubling employee problems, as the business owner, you are still responsible for ensuring compliance and a failure to comply can result in liability.

Overall, professional staffing companies

will help you get through seasonal spikes in production, provide fill in workers when an employee takes a leave of absence, and allow you to "shop" for the right candidate when you do have a full-time opening in your work force. Making sure you comply with the law when it comes to hiring temporary help will help reduce the risk of claims associated with the hiring of temporary workers.



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