Staffing Legal Risks: Real Life Stories
Today’s Presenters

Moderator: Mark Roberts
CEO, TechServe Alliance

Bill Josey, Attorney at Law
TechServe Alliance Premium Services Program

Jill Norton, Senior Account Executive
TechServe Alliance Business Insurance Program
Equal Employment Opportunity

a) Equal Pay/Compensation
b) Genetic Information
c) Harassment
d) National Origin
e) Pregnancy
f) Race/Color
g) Religion
h) Sex
i) Age
j) Disability
k) Retaliation
l) State and local laws (mandatory policies and training)
Wage/Hour Compliance (Billable Employees)

a) Classification: exempt/nonexempt
b) Preparatory work, training time, interview pay, timekeeping, bonuses
c) California and other state and local requirements (e.g., local overtime and minimum pay rules, final/prompt pay, break times, pay advice requirements, etc.)
d) Billed hours vs. paid hours.
e) Industry specific (computer professional exemption, piecework)
Wage/Hour Compliance (Internal Employees)

a) Account Managers/Executives
   (inside sales vs outside sales)

b) Recruiters (sourcing vs recruiting)
Discrimination Cases Brought Against Staffing Firms

JOSEPH M. ONESIMUS v. KFORCE INC., 1/29/19, U.S DISTRICT COURT, ILLINOIS
Race discrimination.

SYED NAZIM ALI vs. ROBERT HALF INTERNATIONAL, INC., 4/28/19, U.S DISTRICT COURT, CALIFORNIA
Disability discrimination, failure to enter into interactive process, retaliation.

KEVAN BASZCEWSKI v. KFORCE INC., 5/6/19, U.S. DISTRICT COURT, PENNSYLVANIA
Sexual harassment (male complainant, male harasser), retaliation.
ELIZABETH CALLAWAY v. JUSTIN WEST and STARTEK, INC., 12/28/18, Circuit Court, Missouri
Retaliation claim alleging Plaintiff was terminated for complaining about HR Manager’s sexual harassment. HR Manager personally sued as well as staffing company.

LISA M. SCHILLER v. MANPOWERGROUP US, INC., 12/13/18, U.S. DISTRICT COURT, SOUTH CAROLINA
Sales Vice President claiming disability discrimination by senior executives, including Division President, after ankle surgery and brain surgery for tumor.

RANI SPAULDING v. SPECIAL COUNSEL, INC., 4/11/19, U.S. DISTRICT COURT, TEXAS
Disability discrimination. Account manager terminated after developing post-traumatic stress syndrome following attack by temp she was directed to terminate onsite at temp’s home.
Wage Hour Cases Brought Against Staffing Firms

JOHNNIE MORENO AND ROBERT § GUTIERREZ, v. ROBERT HALF INTERNATIONAL, INC., 4/29/19, UNITED STATES DISTRICT COURT WESTERN DISTRICT OF TEXAS

Cell tower temp workers paid straight time as computer professionals.

DIETRICK ET AL V. APEX SYSTEMS, LLC. 1/2/19, U.S. DISTRICT COURT DISTRICT OF MARLYAND

Class action alleging salaried and commissioned recruiters are actually working as mere sourcers, because Account Managers actually make the match.

AYODEJI DIKIO v. INSIGHT GLOBAL, LLC, 4/19/19, U. S. DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS

Class action alleging that medical information system trainers were misclassified as overtime exempt computer professionals.
Employment Practices Claims

- 25 Employment Claims; 16 Since 2016

- Claim: Discrimination, Failure to Accommodate, Retaliation & Overtime
  - Total Paid: $267,694
    - $150,000 Loss
    - $117,694 Defense Costs

- Claim: Sexual Discrimination, Harassment and Wrongful Termination
  - Total Paid: $158,903
    - $113,765 Loss
    - $45,138 Defense Costs
Employment Practices Claims

- Claim: Class Action Lawsuit California Labor Law Violations including failure to provide meal periods, failure to provide rest periods, failure to pay employees for all hours worked
- Claim: Failure to comply with California law including unpaid overtime, meal and rest break violations, and non-compliant wage statements
- Claim: Discrimination; EEOC claim alleging race and disability discrimination and retaliation
Employment Practices Claims

Currently Open

- Claim: Discrimination, Harassment, Retaliation, Discharge and Lack of Reasonable Accommodation
- Claim: Sexual discrimination, Harassment and Wrongful Termination
- Claim: Misgendering; Continuously referring to claimant using words, especially pronouns in form of address that do not reflect the gender that claimant identifies with
Employment Practices Liability Policy

The liability coverages are written on a claims-made basis. The liability coverages cover only claims first made against insureds during the policy period.

The limit of liability available to pay settlements or judgments will be reduced by defense expenses, and defense expenses will be applied against the retention.

The company has no duty to defend any claim unless duty-to-defend coverage had been specifically provided herein.
Employment Practices Liability Policy: Declarations Page

Limit of Liability: $1,000,000 for all Claims
Third Party Claim Coverage: Applicable
Additional Defense Coverage: Not Applicable
Additional Defense Limit of Liability: Not Covered for all Claims

Retention:
$25,000 for each Claim under Insuring Agreement A.
$25,000 for each Claim under Insuring Agreement B., if applicable
Employment Practices Liability Policy

Prior and Pending Proceeding Date:

Continuity Date:

Type of Liability Coverage: Duty-to-Defend only
Wrongful Employment Practice means any actual or alleged:

1. Discrimination;
2. Retaliation;
3. Sexual Harassment;
4. Workplace Harassment;
5. Wrongful Termination;
6. breach of an Employment Agreement;
7. violation of the Family Medical Leave Act;
8. employment-related misrepresentation;
9. employment-related defamation, including libel or slander, or invasion of privacy;
10. failure or refusal to employ or promote, including the wrongful failure to grant bonuses or perquisites, or grant tenure;
Wrongful Employment Practice

Wrongful Employment Practice means any actual or alleged (cont.):

11. wrongful discipline, wrongful demotion, denial of training, deprivation of career opportunity, denial or deprivation of seniority, or wrongful evaluation;

12. in connection with 1-11 above: (i) negligent hiring, training, retention, or supervision of others, actually or allegedly committed by an Insured; (ii) failing or refusing to create or enforce adequate workplace or employment policies and procedures; or (iii) employment-related wrongful infliction of emotional distress; provided that the Claim alleging such acts is brought by, on behalf of, or for the benefit of, a Claimant or Outside Claimant; or

13. the violation of responsibilities, duties or obligations imposed on an Insured under any Wage and Hour Law.
**Wage and Hour Law**

*Wage and Hour Law* means any federal, state or local law or regulation governing or related to: (i) the payment of wages, including the payment of overtime, on-call time, or minimum wages; (ii) meal periods or rest breaks; (iii) the reimbursement of employment-related expenses; or (iv) the classification of employees for the purpose of determining employees’ eligibility for compensation under such laws.

**Wage and Hour Law Claim Limit of Liability:**

$100,000 for all *Wage and Hour Law* Claims
Third Party Wrongful Act

*Third Party Wrongful Act* means, with respect to any natural person other than a Claimant, any actual or alleged:

1. violation of any federal, state or local law or statute or any common law prohibiting any kind of discrimination; or

2. unwelcome sexual advances, requests for sexual favors or any other conduct of a sexual nature which violates the civil rights of any such person.
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