

Temporary solution

Employers of temps have responsibilities

By KRISTEN D'ANDREA

U.S. staffing companies employed 3 million temporary and contract workers per week last year, up 4 percent from 2012, according to the American Staffing Association. But many employers remain unaware that, when employing temps, expose themselves to the same risks and challenges regarding discrimination and disciplinary matters as with their full-time employees.

Temp employees are often placed in a form of limbo when it comes to their employment status. While they may work onsite at a company, the staffing agency generally handles the temp's paperwork and workmen's compensation matters, and pays their salaries.

In fact, when an employer uses a staffing agency to find temporary help, most of the time the employer and the agency are considered joint employers, according to Mark Reinharz, a partner in Bond, Schoeneck & King's Garden City office. In that case, if the temporary worker is fired, he or she can sue both employers for discrimination or rights violated.

"Sometimes people don't understand they're considered the joint employer," Reinharz said. "Simply because you're not cutting them a paycheck, doesn't mean you couldn't be on the hook for damages."

The question of who is the temp's employer depends on a number of factors, including who has the authority to hire or fire the individual and who supervises the employee on a daily basis, according to Dominique Camacho Moran, partner in charge of the employment law practice group at Farrell Fritz in Uniondale.

In most cases, the company exercising control over the employee is considered an employer, Reinharz said.

"If you are telling the employee where to work and supervising their day-to-day work,

you are exercising control," he said.

Employers who are unaware they are considered employers can encounter a variety of issues, Moran noted.

"If you don't realize you're the employer, than you don't do certain things to make sure you're in compliance," she said.

For instance, having the right policies and procedures in place for temp employees is critical. In a temporary staffing agreement, employers should make sure the agency recognizes it is an employer and has appropriate policies for wage-and-hour questions and harassment complaints, she said. And employers who maintain workers onsite should make sure everyone understands the company's harassment policy.

"Employers need to understand they cannot ignore a complaint," no matter what the situation, Moran said, noting employers have a responsibility to investigate any allegation of unlawful conduct.

"The appropriateness of the course of conduct may be different when talking about a temp but, practically, you want to make sure you're not ignoring a complaint," she said.

More often, a regular employee may complain a temp is harassing him or her, Moran said.

"Odds are, the employer will know about the inappropriate conduct," she said.

If, however, a temp is complaining about a full-time employee harassing him or her, the employer may not even be aware of the situation. If the staffing agency doesn't communicate the problem, the employer doesn't have the opportunity to pursue the situation until the case is further along in litigation, she said.

Additionally, employers should carefully define a temporary employee's status, as well as the benefits that apply to temps versus



DOMENIQUE CAMACHO MORAN: Employers must investigate any allegation of unlawful conduct, whether it involves full-time employees or temps.

Photo by Bob Giglione

full-time employees, said Andrew Turro, a partner in the employment law practice at Meyer Suozzi English & Klein in Garden City.

For example, employers should make it clear to temps that they will not be eligible for 401(k) benefits.

"It's important for companies to make sure benefits are clearly stated or they leave themselves open to be challenged by the [temporary] employee," Turro said.

Managers should be trained specifically regarding how to supervise temporary employees. Supervisors shouldn't interview and hire the employee or give performance reviews when a staffing agency is involved, Moran said.

Managers and supervisors need to understand that even if the situation is complicated, it's manageable – as long as all parties understand their roles, Moran added.

The bottom line: Although it's likely companies using a staffing agency to hire temps will be considered a joint employer, they should take steps to prevent any misconduct going unnoticed.

If a company is looking for temporary help as opposed to a full-time employee, "the goal is not to employ the temps or have them on your payroll," Moran said.