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## A Solid Contract is Key to Strong Relationship with Chosen Staffing Partner: ASA General Staffing Agreement a Great Foundation for Staffing Contracts

**Now pronounce you co-employers.** If your company uses workers supplied by a staffing company, then you are one-half of a co-employer couple. According to the American Staffing Association (ASA), the formal definition of co-employment is, "A commercial relationship between two or more businesses in which each has actual or potential legal rights and obligations as an employer with respect to the same employee or group of employees." Like any business relationship, whether or not you and your staffing firm are co-employers who will work happily-ever-after together largely depends on how each party accepts and handles their half of the responsibilities in the partnership.

When properly handled, both contractually and operationally, the co-employment relationship is mutually beneficial for both parties involved. However, when mishandled, co-employment can create unintended and sometimes undesirable results. The best way for both staffing firms and staffing clients to protect themselves from damages or losses related to co-employment is to sign and follow a contract that clearly outlines each party's responsibilities for shared employees and contains an indemnification clause that "...makes each party responsible for the risks associated with its own business and gives each party a duty to indemnify the other only for those risks." (*General Staffing Agreement*. American Staffing Association. 2006.)

When drawing up a contract, understanding the specific service staffing firms provide is a good starting point for determining which employer responsibilities should be designated as belonging to the staffing firm and which should be designated as belonging to the staffing firm's client. Staffing firms provide screened, qualified employees to work on assignments at their clients' companies. This service is different than the services of an independent contractor or many other vendors that businesses use because the provision of employees to help complete a job is a means to an end result, not an end result, or completion of the job, itself.

Therefore, the staffing firm should have responsibility for the employer roles that are directly related to its business and within its control, both contractually and operationally, such as: employment eligibility verification, recording of wages and benefits, withholding of payroll taxes, providing workers' compensation insurance coverage, hiring, firing, and handling employee complaints on work conditions and work-related matters. With employer duties related to recruiting, screening, payroll and human resources covered by the staffing firm, that leaves employer responsibilities related to on-the-job supervision and provision of a safe working environment, both directly related to the staffing client's operations, to the staffing client. Specific employer duties that should belong to the

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client include: supervising and directing employees' daily work, providing a safe work environment, ensuring employee job duties are consistent with original expectations, and determining the length of staffing employee assignments at the client company.

Once each party's responsibilities as a co-employer have been assigned by determining to whose business each responsibility is directly related, it becomes much easier to understand the need for and to accept a fair indemnity clause in a staffing vendor contract. In legal terms, indemnity refers to an agreement where one party agrees to protect another against a potential future loss or damage. In a contract for a partnership between a staffing company and its client a fair indemnity clause is one in which the staffing firm takes and covers all of the risks associated with its business and the staffing client retains all of the risks of its business. The client should not be held responsible for any damages or losses caused in the case that the staffing firm does not properly fulfill the human resource functions they perform, and the staffing firm should not be held responsible for any damages or losses related to the client's management, workplace or other factors of which the staffing firm has no knowledge, control, or financial interest.

While ensuring that the contract a company signs with its staffing vendor clearly outlines the responsibilities of each party and contains a fair indemnity clause may seem like a very obvious element in a successful partnership, a trend towards asking staffing firms to sign agreements or contract amendments that require the them to take more than their fair share of the risk is becoming increasingly common. More and more staffing clients are presenting their staffing vendors with contracts that ask them to take responsibility for things that are either out of their control or that their workers' compensation insurance and general liability insurance does not cover. If a staffing firm signs this type of contract and something unexpectedly goes wrong, the staffing firm could face damages so serious that its ability to stay in business could be threatened if the agreement is upheld by a court of law. Likewise, if a client signs an agreement that requires them to take on more than their fair share of employer responsibilities for an employee assigned by a staffing firm and something goes wrong, they could also be liable for grave damages related to things outside of their control if the agreement holds up in court.

If your company's risk management or purchasing department is currently requiring or considering requiring all staffing vendors to sign an agreement with an indemnity clause like the one discussed above, they should expect to come up against some resistance. In fact, the ASA, which is the organization that sets standards for legal and ethical practices in the staffing industry, advises all staffing companies against signing these types of agreements.

So, what can you do if you have a need for qualified workers to complete a project and a staffing vendor that does not want to sign an indemnity agreement issued by your risk management department? The ASA offers two potential solutions.

The first is the ASA's *General Staffing Agreement*, which is a general agreement between a staffing firm and its client that clearly states each party's responsibilities as a co-employer and outlines each party's acceptance of the risk and to indemnify the other only for things that are directly related to their business.

The second solution is the ASA's *Amendment to Client's Staffing Agreement* which can be used in addition to the contract a staffing client requires all of its staffing vendors to sign. This amendment, like the *General Staffing Agreement*, also clearly states each party's responsibilities as a co-employer and outlines each party's acceptance of the risk and to indemnify the other only for things that are directly related to their business.

Both of the ASA agreements were written by some of the best legal minds in the nation, who designed them to protect both staffing firms and their clients from putting their companies at undue risk. The agreements are quickly becoming the standard for contracts in the staffing industry and staffing clients should expect to see them from staffing vendors who operate according to the highest level of legal and ethical standards going forward.

At the end of the work day, the co-employer relationship that forms when a staffing firm provides personnel to work on assignment at a client's company is an intricate one. When the relationship is handled properly with a contract that is upfront about each company's responsibilities and liabilities, it can also be one that is profitable for both parties for as long as they both shall wish to do business with each other.

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*We speak your language- clear and simple. Performance Counts.*

## Temporary Staffing Helps Companies Facing Current Talent Shortages Succeed

For years labor analysts have warned of an impending talent shortage in the U.S. that will be caused by the number of Baby Boomers leaving the workforce outweighing the number of qualified individuals entering it. Currently, the talent shortage that they have been warning of is no longer impending, it has arrived. And, if the experts are correct, it will continue to worsen as the youngest of the Baby Boomers retire over the next 4 years.

Skilled and general labor positions will become some of the hardest for employers to fill as the remaining 40% of Boomers, many holding these types of jobs, retire between 2008 and 2012. In fact, skilled and general labor positions held 6 of the spots on the recently released list of "Top 10 Talent Shortages in 2008" (see box to right). As a result, employers who rely on laborers to meet their goals are having to dedicate time and resources to finding new ways to fill them.

One great way for employers to battle the talent crunch is to access the talent resources of temporary staffing firms like Award Staffing that have large databases of workers available who prefer temporary work because it offers them flexibility that they cannot get with traditional full-time employment arrangements. According to a recent survey performed by the American Staffing Association, over ninety percent of employees surveyed said flexible worktime was an important or very important factor in their decision to become a temporary worker. If your company only utilizes traditional employment arrangements or minimally utilizes temporary workers, then you are missing out on a large portion of the workforce that will help ensure you will be able to operate no matter how tight the labor market becomes.

If you would like to learn more about how Award Staffing can help your company succeed in the face of a tight labor market or talent shortage call 952-924-9000 today!

### Top 10 Talent Shortages in 2008:

1. Engineers
2. Machinists/Machine Operators
3. Skilled Manual Trades
4. Technicians
5. Sales Representatives
6. Accounting & Finance Staff
7. Mechanics
8. Laborers
9. IT Staff
10. Production Operators

### Award Kicks Off National Safety Month by Hosting Safety Luncheon

In observation of National Safety Month, which takes place every June, Award Staffing invited individuals interested in workplace safety and risk management to join us for lunch and an installment of our Safety Series.

Carlos Figueroa, Award Staffing's Workers' Compensation Risk Certified (WRC) and Safety Auditor Certified (SAC) Safety and Risk Manager presented, "Did you know your choice in a temporary staffing vendor can affect your OSHA log?" Carlos outlined some alarming workplace safety and injury statistics, recent changes to OSHA recordkeeping rules and the importance of ensuring that you and your temporary staffing vendor are in compliance with OSHA laws to your bottom line.

Overall, attendees, who came from a variety of companies and held a variety of positions within those companies, found the presentation to be extremely informative. One satisfied attendee even commented, "I was extremely impressed by Carlos' knowledge of safety and the level of importance placed on safety by Award Staffing. Their safety program really does set them apart."

If you would like to learn more about Award's June Safety Series and how your choice in a temporary staffing vendor can affect your OSHA log, or would like to ensure you are notified of our next Safety Series installment, call your Account Manager at 952-924-9000 today!

### In the Breakroom: Award Staffing Sudoku

	9	7	5			6		
	8				3			
		4	8			5	9	1
				1	5	9		4
4		3	9	2				
8	3	6			9	4		
			4				6	
		9			1	3	5	

This issue's sudoku puzzle is rated hard.

Stumped!? For the solutions to this puzzle call your Account Manager at 952-924-9000.

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