

Four Legal Trends Staffing Firms Should Prepare for in 2019

By Martin L. Borosko, Esq., Timothy J. Szuhaj, Esq. and Christopher M. Leddy, Esq.

As we are well into the New Year, forward thinking staffing firms have already planned and prepared for the impending changes they will be facing. These include, among other things, revenue forecasting, sales and marketing campaigns, along with budgets to project and set. Just as important, there was macro planning to do as well, which likely included identifying major trends that will impact the industry. As part of Becker's industry thought leadership, we have identified four of the top legal trends that we believe will impact the staffing industry this year and into 2020.

Number One - Predictive Scheduling or Fair Workweek Laws

The staffing industry should expect an increase in states and local governments passing and implementing "fair workweek" or "predictive scheduling" laws. These laws are intended to afford employees greater predictability, flexibility and control over their work schedules. Generally speaking, the laws are primarily aimed at protecting workers in the retail and restaurant industry. A number of states and cities have already enacted such laws. American Staffing Association and its local chapters have been intensely lobbying against these laws in many localities.

The anticipated impact on effected staffing companies may be far-reaching. First, by essentially restricting the use of staffing firms, these laws could deny jobs to thousands of temporary and contract workers and eliminate the common "bridge" to permanent employment for such workers. Second, compliance with the ordinance would be extremely difficult for staffing firms. Most of these laws require temporary workers assigned to retail, restaurant, and hospitality clients to be provided with written, good faith estimates of the employee's work schedule upon hire, written notice of the actual schedule on or before commencement of employment, discrete and relatively short advanced notice of any new schedule, and finally, advanced notice of any proposed changes to a posted work schedule. Additionally, many of the ordinances require employers to offer work hours to those already employed, thereby lessening the hours offered to contract workers.

These measures would eliminate the workplace flexibility that many temporary workers seek, making already thin applicant pools even less populated.

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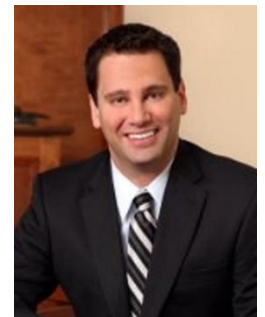
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On January 9, 2019, Becker hosted a webinar dedicated to understanding these new laws, their impact on the industry and identifying best practices staffing firms can implement to lessen the impact of the laws on their business. You can listen to the recorded webinar on our website by using the following link: [Predictive Scheduling & Fair Work Week Ordinances Webinar](#).

Number Two – Deregulation at the Federal Level Leading to Further Regulation at the State and Local Level

As most know, the Trump administration has been very active in eliminating regulation at the Federal level. That trend likely will continue in 2019 and 2020 with one exception, staffing firms should expect the Department of Labor to issue new rules increasing the salary exemption from \$23,660 into the low to mid \$30,000 range in March of 2019. Labor Secretary Acosta has indicated he favors doing such and the Trump administration announced its intention to issue a Notice of Proposed Rulemaking in March of 2019.

In addition, it is very unlikely given the split in Congress that we will see much of anything in terms of new congressional legislation over the next two years. Certainly, the decrease in federal legislation and regulation is a positive development for the staffing industry. However, the impact of this development has been tempered and will continue to be tempered by states and localities, especially so-called “blue states” stepping in to regulate in the absence of Federal regulation. In particular, States and localities have been active in passing new employment related regulations impacting the staffing industry in 2018. We have seen new minimum wage laws and ordinances, new paid sick leave ordinances, new healthcare directives, expanding legalization and use of marijuana, new privacy laws and regulations, as well as others in many states and localities. This trend will continue over the next two years.

Number Three – Providing Top Producers and Other High Impact Internal Employees with Attractive Compensation Packages

Attracting new talent and retaining existing talent is the key to growing any business and is a difficult task in this tight labor market. As a result, we have seen many of our industry clients take steps to improve the compensation packages offered to top producers and other high impact employees. These steps include creating multi-layered and multi-tiered commission plans, including these employees in profit sharing plans and providing these employees with minority equity, options and/or “phantom stock” plans.

Conversely, we continue to encourage our clients to put a comprehensive set of policies in place to protect their client base, good will and confidential information. In our experience, staffing firms do not follow best practices from other industries that could help protect them from suffering a loss of clients, good will and confidential information when top producers and other high impact employees leave to join competitors. There are a number of best practices that can be incorporated into the internal employee on-boarding and standard operating procedures that can protect staffing firms.

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Number Four – #MeToo

The sweeping changes and notability brought about by the #MeToo movement cannot be understated. The movement has caused many states and localities to enact new laws which specifically target the eradication of sexual harassment. Many of these laws require policies and trainings which comply with very specific legal provisions. Failure to comply could result in not only administrative penalties, but also civil exposure. However, there may be a positive impact from these regulations – if employers comply with them, employers may have a defense in, and possibly a way out of, a sexual harassment lawsuit.

We expect the movement to continue and only become more pronounced. It is imperative that staffing firms stay up to date on these laws and ensure their policies cover what is required. Also, at least on an annual basis, staffing firms should be conducting trainings for its employees.

About Becker

Our staffing practice is national and one of the largest in the country. Our clients span the spectrum of the industry in terms of size - ranging from large publicly traded companies to smaller highly specialized firms – and in terms of market sector – including staffing firms that focus on professional services (legal, accounting and finance), technology, healthcare, engineering, light industrial and commercial.

We have nine attorneys that dedicate a material portion of their practice to the staffing industry. We counsel staffing firms on all of the major strategic and operational issues impacting their business. In this regard, we offer advice on structuring, mergers and acquisitions, HR, regulatory compliance, on-boarding, off-boarding, compensation strategies and plans, client contracts focusing on indemnification and other key risk provisions and litigation.

Our dedication to understanding the staffing industry delivers tangible benefits to our staffing industry clients.

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