**Long Term Contractors**

In the past the Federal Court of Appeals in Richmond decided how easy it is for someone to be a “joint employee” of two employers (Butler v. Drive Automotive). The case involved whether a temporary service employee (Ms. Butler) was also employed by the manufacturer where she was assigned. Could she sue that manufacturer for sexual harassment and termination under laws protecting only employees? The court said yes.

Most courts say if both entities have enough control or economic connection to the individual, (s)he is employed by both. This Appeals court fashioned a broad, hybrid test for joint employer status including whether each had some power to hire, fire, or supervise in a meaningful way, and where/how the work takes place compared to regular employees. This could mean that nearly all extended work placements through temporary services (involving hiring by the service and some training/supervision by the customer or both) create joint employers.

A similar issue arises with direct hired contract workers. Some employers use an in-house group of contract workers to handle fluctuations in volume or to serve as a pool for future full-time hires. Whether temp or direct, a special group of workers is created who do not enjoy the same working terms of regular employees.

There are many good reasons to use long-term temporary and contract workers, but these challenges are often ignored:

**Unintended consequences.** Lawsuits, injury claims and expensive benefits make full-time employee status costly. Some employers manage “headcount,” risks and costs by restricting full-time hires, preferring either part-time employees or other solutions such as direct contractors. It is just not that easy. By substituting significant, extended work from these temporary and contract workers, employers may avoid one set of costs and create a new, unbudgeted set of costs. If we could reliably reduce the extra costs of employing people just by calling them non-employees, then none of us would work directly for an employer!

**Employee relations.**If we expect the contractor/temp group to be happy with their non-employee status long term, we might be dreaming. Too often, managers treat the contract group as expendable. “Just let them go” some say, rather than address problems. The same physical separation, different uniforms and procedural techniques used to prove these workers are not employees may in fact cause serious dissatisfaction ... without establishing the desired legal separation. Poor (or zero) onboarding, second-class status, ignoring complaints, little communication about next steps and limited performance feedback are common problems. Remember, despite efforts to mechanically avoid employee status, the pressures of work and output usually confuse the worker’s status.

The costs of hiring regular employees can be managed and the risks contained. When an employer is surprised to learn after a claim is filed that the law views it as an employer of temporary and contract workers, it is too late to prepare or insure. Employers using these relationships as long-term solutions should carefully assess the total costs.

To discuss alternative staffing options for your business contact Catapult’s Advice Team at 919-878-9222.

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