

Massachusetts Agency Reverses Course on Staffing Firm Licensure - Registration Sufficient

In an important development for staffing firms doing business in Massachusetts, the commonwealth's Division of Occupational Safety has agreed that staffing firms doing business within the commonwealth need not become licensed just because their bill rates exceed wages paid to temporary workers. Rather, they must register with the state.

For more than 40 years, only firms charging candidates a fee for employment had to become licensed under the commonwealth's Employment Agency Law. Staffing firms providing temporary services and direct hire firms paid by clients had to register only.

Earlier this year, however, DOS took the position that, because staffing firm fees charged to clients exceed the wages paid to temporary employees, staffing firms were indirectly charging temporary employees fees for employment--thus triggering the licensing requirement.

Such interpretation of the law would have had serious consequences for firms doing business in the commonwealth, including, among other things, the imposition of rate caps and bill rate disclosure requirements.

In light of these ramifications, ASA's lobbyist, Roger Donoghue, and deputy general counsel, Stephen Dwyer, along with Dedham, MA-based TAC Worldwide associate general counsel, Ken Spigle, met with DOS to explain that, in our view, there was no basis in the law for such an interpretation.

We noted that, if a firm is providing temporary help, it is excluded from the definition of "employment agency," and thus need not be licensed. We further noted that the fact that firms charge clients more than what they pay assigned workers does not support DOS's assertion that a fee is indirectly charged to assigned workers.

We also explained that DOS's interpretation of the law would have devastating ramifications and would drive staffing firms out of the commonwealth, thus harming clients and workers.

Recognizing that its interpretation would cause severe economic harm to the staffing industry, DOS has reversed course and will not require staffing firms to become licensed just because their bill rates exceed pay rates. Instead, such firms must be registered, and those firms that had agreed to become licensed will be deemed by the agency to be registered.

Meanwhile, ASA is working to address a bill (H. 1855) that was introduced at DOS's behest and would effectively ratify the agency's now-abandoned interpretation by requiring firms that render temporary help to become licensed.

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