

The ABC's of Co-Employment

Do you know your co-employment responsibilities when partnering with a staffing company? Did you know you could put yourself at risk for liability, including lawsuits, by assuming too much employer responsibility?

Here's a sample scenario:

Mary, a temporary employee assigned by ABC Staffing Agency to work at your company, wants to change her schedule due to childcare needs. She asks you, her supervisor, to approve the change she requests. You can't accommodate the change and decline her request, and Mary thinks you're discriminating against her based on her gender.

Did you just put yourself at unnecessary risk for an EEOC charge or a discrimination lawsuit?

Yes. Co-employment liability commonly occurs in regards to discrimination laws, workers' compensation, occupational safety and health (OSHA), wage and hour compliance, family and medical leave rights and labor management and benefits eligibility.

Should Mary have even asked you in the first place, since Mary was placed by ABC Staffing Agency?

No. It is your responsibility to direct Mary to her employer of record, i.e. ABC Staffing Agency. By responding to Mary's schedule request, you have just assumed the responsibility as an employer. If Mary tried to call ABC Staffing Agency first and then asked you for permission to change her schedule and you responded, then both companies may be liable as co-employers.

Co-employment Defined

Co-employment is the relationship between two or more companies, usually between a staffing company and one of its client companies, where each party has duties and obligations as an employer. And *co-employment liability* is the liability resulting from either a staffing company failing to perform its employer responsibilities, or a client company incorrectly assuming employer responsibilities.

Protect your business by knowing precisely what your responsibilities are, leaving the rest to your staffing agency. Your responsibilities include:

- Supervising the employee's day-to-day work
- Monitoring the conditions at the work site
- Determining the length of the assignment

Your staffing agency protects you by performing the following:

- Work authorization check (I-9 and e-Verify by the U.S. Department of Homeland Security)
- Pre-screening, reference check, behavioral assessment
- Drug screening and background check at client's request
- Hiring and firing
- Establishing pay rates
- Performance reviews and feedback

- Workers' Compensation and Unemployment coverage
- Complying with extensive employment regulations

What else does the staffing agency do to insulate you and your business from liability?

- Obtain detailed job descriptions from you and only select qualified employees that meet your business needs
- Maintain regular contact and provide performance feedback to the employees
- Handle all personnel issues and discourage you from keeping "personnel" files
- Manage all employees' assignment problems or concerns directly
- Visit work sites to ensure all employees are properly trained and provide safety training

Disclaimer: This article is for informational purposes only and is not intended to replace consultation with and advice from competent legal counsel.