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Get the Most Out of Your Direct Placement Fees and Agreements



WEBINARS

June 20


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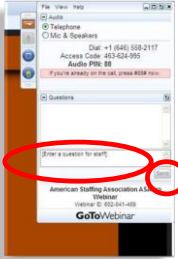
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- **Questions Panel**
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Refresher

- Clear/confirm your service fee during the initial conversations with your client, and certainly before referring candidates
- Always send your fee agreement to your client, whether or not it will be signed by your client

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Refresher

- Have your client sign your fee agreement whenever possible, but always when working with a client located in Massachusetts
- Do not put a preprinted signature line for you client on your fee agreement unless you're going to insist that it be signed by your client before beginning the recruiting process

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Client Recruiting Agreements

- Generally much lengthier than your fee agreement
- Often contain problematic provisions.
- Should be carefully reviewed by you and your legal counsel before they are signed, because:
 - You are generally bound by the terms of an agreement once signed, whether or not you read it before signing it
 - Ignorance of a contract's terms is no defense under the law

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Client Recruiting Agreement Provisions

Problematic provisions are commonly found in client recruiting agreements

- Indemnification provisions

- If you agree to indemnify your client, you're obligating yourself to make good any loss or damage incurred by your client relating to the matters covered by the indemnification provision. Essentially, you are agreeing to "stand in the shoes" of your client and assume all costs associated with certain matters, including the cost of defense for claims asserted against your client.

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Client Recruiting Agreement Provisions

- Typical provision:

- "The Recruiting Firm agrees to fully defend, protect, indemnify and hold harmless Acme Corporation, its agents and employees, from and against each and every claim, demand, cause of action, judgment or liability of whatever nature, and all costs and expenses, including but not limited to reasonable attorneys' fees incurred in defense thereof, which may be made or brought by any person, including Acme Corporation, its employees, agents, or subcontractors arising out of or in connection with Recruiting Firm's performance under this Agreement."

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Client Recruiting Agreement Provisions

- Overly broad because your obligation of indemnification is not contingent on you having done anything wrong. It is not tied to your negligence or misconduct.
- You should only be obligated to indemnify if you were at fault for the damage

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Client Recruiting Agreement Provisions

- Your obligation to indemnify your client should only trigger if your “negligence” or “willful misconduct” caused the injury or damage
- Even if you were negligent, your obligation should be limited to providing indemnification to the extent of your negligence

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Client Recruiting Agreement Provisions

- Onerous provision example:
 - “Recruiting Firm agrees to indemnify and hold Acme Corporation, its parent, subsidiaries and affiliated companies and/or its or their customers, harmless from all claims, judgments, decrees, damages, losses, costs and expenses, including attorneys’ fees incident to any actual or alleged infringement of any patent, copyright, service or trademark, or other intellectual or industrial property right (including, without limitation, misappropriation of trade secrets) in any manner arising out of or connected with the goods and services covered by this Agreement.”

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Client Recruiting Agreement Provisions

- It is prudent and advisable to keep your general liability (“GL”), errors and omissions (“E&O”), and employment practices liability (“EPLI”) insurance policies in force at all times

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Client Recruiting Agreement Provisions

- Client “knew” the candidate provisions
 - Does this look familiar?
 - “If the Acme Corporation has previously received the candidate’s resume or referral from the candidate or any other source, service fee will not be payable to the Recruiting Firm.”
 - A potentially very harmful provision, particularly given the continuing growth of client and third-party job boards and social network sites

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Client Recruiting Agreement Provisions

- Attempt to negotiate the insertion of a requirement that your client was in “active negotiations with your candidate for the same position at the time of your referral” in order to relieve your client of its responsibility to pay your service fee

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Client Recruiting Agreement Provisions

- At a minimum, your client should be obligated to notify you within 24–72 hours after your referral if they have previously received the candidate’s resume

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Client Recruiting Agreement Provisions

- **“Candidate Ownership” provisions**
 - Client agreements often contain provisions such as:
 - **“Acme Corporation will pay a service fee to Recruiting Firm provided that it hires a candidate within 90 days of Recruiting Firm’s referral of the candidate to the Acme Corporation.”**

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Client Recruiting Agreement Provisions

- **“Hands-Off” Provisions.**
 - It is common to see the following type of provision in your client’s agreements:
 - **“Recruiting Firm agrees not to recruit or provide placement assistance to any employee of Acme Corporation or its subsidiaries or affiliates during the term of this agreement and for a period of 12 months thereafter”**
 - **With contingency search, the hands-off provision should run from the date of the “last placement for which the Recruiting Firm was paid a service fee by the Acme Corporation”**

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Client Recruiting Agreement Provisions

- **As a legal matter, this type of provision is likely unenforceable by your client if it has not paid you for a placement since you have not been provided consideration for your adherence to this provision**

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Client Recruiting Agreement Provisions

- **Termination provisions**
 - Many client agreements contain provisions such as:
 - “Acme Corporation may terminate this agreement at any time for convenience upon giving ___ day’s prior written notice to Recruiting Firm”
 - You should attempt to mutualize the provision so that either you or your client may terminate the agreement upon ___ day’s written notice to the other

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Client Recruiting Agreement Provisions

- **Try to include a “pipeline candidate” provision in any termination agreement, such as:**
 - “Acme Corporation shall remain liable to Recruiting Firm for a service fee for any candidate referred to Acme Corporation by Recruiting Firm on or before the expiration or termination of this Agreement”

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Client Employee’s Authority

- **When pursuing payment of a service fee, your client might argue that their employee who agreed to pay your service fee and gave you the search assignment, did not have the authority to do so**
- **Your client’s employee will have the authority to obligate the client to pay your service fee in one of two ways**

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Client Employee's Authority

- The employee may have what the law deems to be "actual authority." For example, the client's president told the employee she may contract with recruiters to find employees for the company.

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Client Employee's Authority

- Or, more commonly, the employee may have what the law deems "apparent authority"
 - The employee is deemed to have the necessary authority to bind the client if it would appear to a reasonable business person dealing with that employee that she had the authority

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Client Employee's Authority

Example

- The recruiter is dealing with the vice president of human resources, that individual would have the apparent authority to bind the company through her actions

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Client Employee's Authority

The one exception

- If the recruiter had actual knowledge that the employee with whom the recruiter dealt did not have the authority to bind the company

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Backdoor Hires

- What is a backdoor hire?
- How do you discover a backdoor hire and what should you do about it?
 - Speak with your candidate and obtain as much information as possible
 - Invoice the client for the placement
 - (Optional) Contact the client and congratulate them on the hiring of your candidate. Let them know your invoice is on the way.

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- Recording will be available within two days
- Qualifies for legal continuing education credit

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Upcoming Webinars

- June 25: What to Tell Your Clients About the Affordable Care Act
This ASAPro webinar qualifies for 1.0 active legal CE hour
- June 27: Insights and Trends in Allied Health Care Staffing
- July 18: Playing It Safe—Workplace Safety Obligations of Staffing Firms and Their Clients
- July 25: Maximize the Short- and Long-Term Value of Your Firm
These ASAPro webinars each qualify for 1.0 active CE hour

The graphic features the ASA logo in the top left corner. The main text reads "STAFFING WORLD 2013" with the year digits in orange boxes, followed by "Oct. 8-10 • Orlando" and "ASA Convention & Expo". A central image shows a city skyline at night with palm trees. A blue curved banner at the bottom left says "The Can't-Miss Event for Staffing Executives". An orange curved banner on the right says "Registration is now open for the premier staffing event of the year—the ASA annual convention and expo." At the bottom right, it says "Go to staffingworld.org today to start planning your Staffing World 2013 experience, and to register at the lowest rate available!"



"We must never take for granted the precious gift of hindsight."

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Hindsight always makes it easy to see what your strategy should have been and what your costs really were. Looking forward to the impact of healthcare reform, it's a lot harder. A staffing company can't afford to wait for the 2013 "look-back" period to go by before defining a strategy and determining costs. You need hard, detailed data, expert analysis, and reliable estimating tools—and you need them now. People 2.0 has it all, along with the buying power to cut costs, and the back office resources such an administrative burden will require. You don't need hindsight to see the real competitive advantage at People 2.0.

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