


 American Staffing Association


Protecting and Collecting Your Direct Placement Fees


May 23

 American Staffing Association

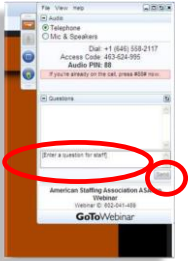
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- **Questions Panel**
 - Type your questions into the Questions panel and click Send.





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Creation of Contract with Client

- Clear/confirm your service fee during the initial conversations with client
- Signed vs. unsigned fee agreements
 - There are three contractual bases for payment of service fees by a recruiter's clients:
 - Oral agreement
 - Oral agreement confirmed by fee/recruiting agreement
 - Written agreement

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Creation of Contract with Client

- Oral and written contracts are generally equally valid, though written contracts are certainly preferable. One exception—one Appellate Court in the Commonwealth of Massachusetts has held that the fee agreement must be signed by the both the Recruiter and Client to be enforceable.

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Creation of Contract with Client (Cont'd)

- Always forward your fee/recruiting agreement to your client, whether or not it will be signed by client.
- ASA has developed an excellent Model Recruiting Agreement for your reference.

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Content of Your Fee Agreement

- Certain terms should always be contained in your fee agreement, including:
 - Contingency Basis
 - Your agreement should explain how the contingency fee works and what you must do to earn your fee
 - For example— "Recruiting Firm's service fee is on a contingency basis and would be payable only if Client or its affiliate hires a candidate, directly or indirectly, for any position, as an employee, consultant or independent contractor within one year after Recruiting Firm's and Client's most recent communication relating to the candidate."

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Content of Your Fee Agreement (Cont'd)

- Computation of the Service Fee
 - The agreement should explain how the contingent fee is calculated.
 - For example, the agreement could state "Recruiting Firm's service fee is equal to 30% of the candidate's first year's total compensation."

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Content of Your Fee Agreement (Cont'd)

▪ **Definitions**

—Certain terms should be defined in the fee agreement, such as:

—**Candidate**—“A person referred to Client by Recruiting Firm directly or indirectly, including anyone referred to Client by Recruiting Firm’s candidate”

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Content of Your Fee Agreement (Cont'd)

▪ **Hire**—“*Hiring a candidate, directly or indirectly, for any position, as an employee, consultant or independent contractor.*”

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Content of Your Fee Agreement (Cont'd)

▪ **First Year’s Compensation**—“A *reasonable estimate of all compensation expected to be earned by the candidate or paid for the candidate’s services during the first year, including wages, salary, draws, fees, commissions, bonuses and other incentives and payments.*”

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Content of Your Fee Agreement (Cont'd)

- **Guarantee**
While it may not be required, recruiters generally provide some type of guarantee relative to the candidate placed with the client.

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Content of Your Fee Agreement (Cont'd)

- For example—*“If the employment of a candidate referred to Client under this agreement lasts less than ___ calendar days, and provided that all fees and expenses relating to such referral have been paid when due, Recruiting Firm will attempt to refer a replacement candidate for the same position at no additional charge to Client. Recruiting Firm’s obligation under this agreement is limited to attempting to find a replacement candidate. No refund will be made if Client hires a replacement from any source, or if Client is no longer actively seeking to fill the position.”*

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Content of Your Fee Agreement (Cont'd)

- Other types of guarantees can be provided such as a refund or prorated refund of the Service Fee, or the Recruiting Firm may choose to offer a credit or discount against future placements as the guarantee.

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Content of Your Fee Agreement (Cont'd)

- It is advisable to limit the bases for providing a guarantee, such as *“This guarantee is not applicable if the service relationship is terminated because the position is eliminated due to layoff, merger, acquisition, decrease in compensation or insufficient work for the candidate.”*

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Content of Your Fee Agreement (Cont'd)

- **Payment Terms**
 The agreement should state the terms of payment, such as *“Recruiting Firm’s Service Fee and any applicable sales, use or similar tax will be invoiced when the candidate is hired and will be due in full within ___ days after the candidate’s start date.”*

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Content of Your Fee Agreement (Cont'd)

- **Presumptions**
 It is advisable to include the following type of statements in the Fee Agreement:
“As part of Recruiting Firm’s service to Client, Recruiting Firm is providing this confirmation of the Parties’ agreement.”

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Content of Your Fee Agreement (Cont'd)

- A statement such as this one is also advisable:
 - *“If these terms do not reflect Client’s understanding of the Parties’ agreement, please contact Recruiting Firm immediately. Recruiting Firm will rely on Client’s acceptance of referrals from Recruiting Firm as establishing that the client has accepted these terms.”*

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Content of Your Fee Agreement (Cont'd)

- These types of statements are particularly important when your Fee/Recruiting Agreement will not be signed by the Client (but should be included even when it will).

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Content of Your Fee Agreement (Cont'd)

- In addition to the foregoing provisions, you should consider inserting several additional provisions, including:
 - Candidate Previously Known By Client
 - To counter a Client’s argument that they don’t believe a service fee is due because they previously “knew” the candidate, the following language could be included in the Fee Agreement

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Content of Your Fee Agreement (Cont'd)

“Client’s prior receipt of a candidate’s resume or other materials from the candidate or any other source (including another recruiter, electronic job board, social network site or media sites, or Client’s employee) and Client’s prior consideration of the candidate for employment shall not affect Client’s obligation to pay Recruiting Firm’s service fee unless the candidate was under active consideration by Client for the position for which he or she was referred by Recruiting Firm at the time of Recruiting Firm’s referral.”

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Content of Your Fee Agreement (Cont'd)

▪ **Choice of Law and Venue**

It is recommended that the following type of language be included in the Fee Agreement:

“This Agreement will be governed by and enforced in accordance with the laws of the State of (insert Recruiter’s State). The Parties agree that state and federal courts within the State of (insert Recruiter’s State) shall have exclusive jurisdiction over any litigation brought or arising out of this Agreement.”

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Documenting the Recruiting Process (Cont'd)

▪ **Notes should be kept, usually in the Recruiter’s recruiting software, and should provide a chronological overview of the search process, including:**

- Conversations with Clients and candidates;
- Actions taken by the Parties;
- Date the Client agreed to the Recruiter’s service fee;
- Date the Fee Agreement was sent to the Client;
- Date of scheduled interviews;
- Results of the interviews; and
- Content of offers made to the candidates.

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Documenting the Recruiting Process (Cont'd)

- Documents provided or exchanged during the recruiting process, including in particular, the Fee Agreement and all correspondence or email exchanges, should be retained.
- Should a dispute arise because a Client refuses to pay a service fee, the Recruiter will want to rely on these records when testifying in any court proceeding.

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Documenting the Recruiting Process (Cont'd)

- The admissibility of the documentation will rely on the “*business records*” exception to the hearsay rule:
 - Notes and copies of documents should be kept on a day-to-day basis as to all recruiting assignments
 - Enter the notes contemporaneously with the occurrence of the activity or event being recorded

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Follow-up After Invoice is Issued

- Once the placement has occurred and an invoice sent to the Client, the following steps should be taken:
 - Follow-up telephone calls to hiring authority—verify that the invoice has been received and remind the hiring authority when the invoice must be paid to validate the guarantee
 - Re-send invoice—if payment is late, and every 20 days thereafter, the client should be re-invoiced
 - Reminder letter and telephone calls to client
 - Follow-up with reminder letters and telephone calls


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Results. Period. 

Mike Rode, Esq.
216-430-2107
mrode@reminger.com


Please feel free to contact me should you have any other questions regarding the material covered.

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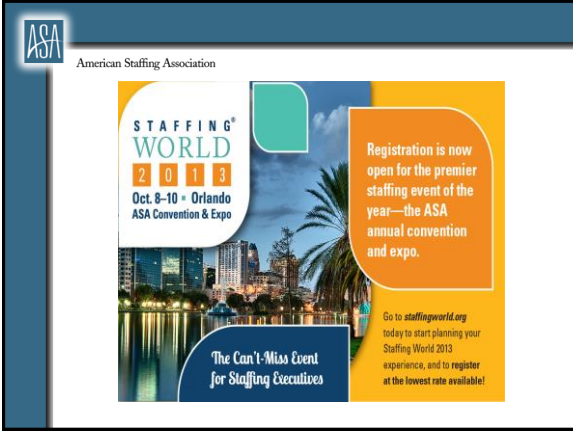
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- Today's webinar has been recorded
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- Qualifies for legal continuing education credit

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Upcoming Webinars

- **May 30: Gain a Competitive Advantage With ASA Certification**
This ASAPro webinar qualifies for 1.0 active CE hour
- **June 11: Affirmative Action in the Workplace—What Staffing Firms Need to Know**
This ASAPro webinar qualifies for 1.0 active legal CE hour



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