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Drug Testing Indemnification Clause Sample

With increasing frequency, staffing firms are encountering client requests that may create additional risk. In these situations, your first and best option is to educate clients about the risk, including alternative ways to achieve the desired goal. If a client is unable or unwilling to modify the requirement, an indemnification clause is one tool available to mitigate risk.

Contractual indemnification is a way of saying that one party (the indemnifying party) agrees to be responsible for and compensate the other party (the indemnified party) for specified costs, damages, fines, liabilities, etc. arising from the activity that caused the risk. After all, if a party insists on a particular contract term and believes the term to be lawful, it is reasonable to expect the party to stand by it.

When you have concerns about a client's approach to drug testing your applicants and employees, you can ask for indemnification. A sample is included below and can be explored with your legal counsel for inclusion in the part of the staffing services contract addressing client-specific servicing requirements related to drug testing.

Drug Testing: Notwithstanding any other agreement between the parties, [Staffing Firm] offers [Client] the option of pre-employment drug testing. Except as specified by [Client] below, [Staffing Firm] shall not perform any pre-employment drug testing. [Client] agrees to defend, indemnify, and hold [Staffing Firm] harmless from and against any claims, damages, suits, charges, losses, fines, penalties, costs, liabilities, and expenses (including reasonable attorneys' fees) to the extent caused by, related to, or arising from the [Client's] drug testing policies or [Staffing Firm's] application of [Client's] drug testing policies to applicants or [Assigned Employees].

NOTE:

- Replace [Client] with the term used in the primary contract to refer to the client.
- Replace [Staffing Firm] with the term used in the primary contract to refer to the staffing firm/provider.
- Replace [Assigned Employees] with the term used in the primary contract to refer to the Staffing Firm's assigned employees.

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