Contingent Workforce Legal Update 2015

Presented by:

Russell D. Chapman
Special Counsel, Littler Mendelson P.C.

Fiona Coombe
Director, Legal & Regulatory Research, Staffing Industry Analysts

Dawn McCartney, Director, Contingent Workforce Strategies & Research, Staffing Industry Analysts

June 24, 2015
10 am PT/ 1 pm ET

This webinar is broadcast through your computer speakers via the audio broadcasting icon on your screen. You may adjust the sound volume by using the slide bar on the audio broadcasting icon. If you cannot access the audio, you may dial into the call by dialing 1-650-479-3208 and using access code 660 767 665. Need further assistance? Contact SIA customer service at 800-950-9496 or memberservices@staffingindustry.com
Who We Are

Over 1000 client organizations benefit from our international research services

- 80% of the largest 50 U.S. staffing firms and 60% of the world’s 25 largest staffing firms are corporate members
- Over 70 buyers of contingent labor are members of our CWS Council, representing over $100 billion in annual contingent workforce spend
- Customers in more than 80 countries

Founded in 1989

- Acquired by Crain Communications ($200M media conglomerate) in 2008
- Headquartered in Mountain View, California and London, England
- 80+ years of industry and advisory service experience among executive team
Our speakers today...

Russell D. Chapman
Special Counsel, Littler Mendelson P.C.

Fiona Coombe
Director, Legal & Regulatory Research
Staffing Industry Analysts

Dawn McCartney
Director, Contingent Workforce Strategies & Research, Staffing Industry Analysts
Contingent Workforce Legal Update 2015

• Managing compliance with I-9 verification
• Paid sick leave
• ACA Update:
  - Reporting requirements
  - Subsidy notices
  - Employer mandate issues
• Questions
Managing compliance with I-9 verification
I-9 Verification Issues: Liability

• “The employer” is responsible for completion

• U.S. Code § 1324a (4) “a person who uses a contract, subcontract..to obtain the labor of an alien..knowing that the alien is an unauthorized alien shall be considered to have hired the alien for employment in violation [of the Act].”

• Unlawful discrimination on grounds of citizenship, immigration status or national origin
I-9 Verification Issues: Liability

• Confirming compliance by suppliers – could a failure to do so be considered ‘knowledge’?

• Audit rights v privacy rights
  – Written consents
  – The “joint employer” conundrum
    • ICE generally considers W-2 reporting company as the “employer” but may be subject to “joint employer” analysis
  – PEO “agency” theory
  – Audit rights
  – Indemnification

• BEWARE: Staffing company brings in employee previously terminated by buyer for “mismatch”
Paid Sick Leave: Common Issues
Paid Family and Sick Leave: Trend Toward Local Legislation

- States:
  - California
  - Conn (sick leave)
  - Mass (sick leave)
  - Minn (FML)

- Municipalities:
  - District of Columbia
  - Jersey City, NJ
  - New York City, NY
  - Philadelphia, PA
  - Portland, OR
  - Seattle, WA
  - SeaTac, WA
  - San Francisco, CA
Paid Family and Sick Leave: Some States are Reacting

- States prohibiting local minimum wage or benefits mandates:
  - Arizona
  - Indiana
  - Kansas
  - Mississippi
  - Oklahoma
  - Utah
Paid Sick Leave: Common Issues

• Does it apply to all employees?
• Who pays for contingent workers’ entitlement?
• Accrual or lump sum?
• Managing the use of sick leave by contingent workers - is a refusal considered ‘retaliation’?
Affordable Care Act Update
Affordable Care Act Update

• King v Burwell

• Employer Mandate’s “safe-harbor”
  – Offer of coverage by “staffing firm” on behalf of buyer is deemed made by buyer if:
    • Staffing firm is not the common law employer
    • Fee paid by client for workers enrolled in coverage is higher than fee client would pay for same employee if they did not enroll
  – Amount of “higher” fee is left to the parties
  – HIPAA privacy issue – establishing who is enrolled for purposes of charging higher fee?
  – Contractual provisions and indemnity
2014 North American Contingent Buyers Survey

We asked buyers: “Based on your communications with suppliers so far, what's your best guess as to how much cost will ultimately be added on to your bill rates to pay for the required ACA healthcare insurance and/or penalties per hour of temp time on average across all your agency temps?”

The overall median expected bill rate increase was $1.00 per hour. Excluding those who expected no bill rate increase at all, the median expected increase was $2.00 per hour.

Results varied among the ninety-two respondents, but the most common answer was no increase due to the ACA, at 36%. This is down from 2012, when 62% expected no bill rate increases.

Median expected bill rate increase due to ACA: $1.00 per hour
“Safe-harbor” added cost: What is your experience?

- When negotiating the added cost for staffing agency workers enrolled in the agency’s group health plan, what per-hour added fees are you seeing?
  a) 0 - 50 cents
  b) 51 cents to $1.00
  c) $1.01 to $1.50
  d) Over $1.50
Affordable Care Act Update: Reporting

• Reporting requirements
  - ALE must file returns with IRS for 2015 by 28/02/16
  - ‘Employer’ includes single entity or related entities
  - Form 1094-C (employee statement)
    & 1095-C (transmittal return)
  – Self-insured plans combine reporting on 1095-C
  – Who is responsible where staffing company is plan sponsor and “employer of record?”
  – Reporting by “third party”
ACA Reporting requirements

• General method & alternative methods.
• IRS will use to determine employer mandate penalty and employee’s eligibility for a premium tax credit.
• Penalty $100 per return for failure to file on time; to include all information; and/or correct information; capped at $1.5 million.
Subsidy Notices

- Certification of Employee Eligibility for Subsidies (s. 1411 ACA)
- Any employer, whose employee qualifies for premium tax credit, will receive a notice from the Exchange
- Right of appeal against incorrect information
- To avoid future 4980H penalty
U.S. Affordable Care Act: Employer Reporting Requirements and Subsidy Notices

June 02, 2015
Fiona Coombe, Director of Legal & Regulatory Research
fcoombe@staffingindustry.com
Russell D. Chapman
Special Counsel, Littler Mendelson P.C.
rchapman@littler.com

Fiona Coombe
Director, Legal & Regulatory Research,
Staffing Industry Analysts
fcoombe@staffingindustry.com

Dawn McCartney, Director, Contingent
Workforce Strategies & Research, Staffing
Industry Analysts
dmccartney@staffingindustry.com
### Upcoming webinars...

<table>
<thead>
<tr>
<th>Topic</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Increasing Capability and Value in CW Programs</td>
<td>7/22/2015</td>
</tr>
<tr>
<td>Future Workforce: Next Generation Workforce Management</td>
<td>8/26/2015</td>
</tr>
<tr>
<td>CW 1.0 Making Sense of the CW World</td>
<td>9/23/2015</td>
</tr>
<tr>
<td>Technology Trends</td>
<td>9/23/2015</td>
</tr>
<tr>
<td>HR and Procurement, who runs the show?</td>
<td>10/28/2015</td>
</tr>
<tr>
<td>Online Labor Marketplaces</td>
<td>10/28/2015</td>
</tr>
<tr>
<td>VMS MSP Landscape</td>
<td>11/19/2015</td>
</tr>
<tr>
<td>In House vs Outsource, which model is right for you?</td>
<td>12/17/2015</td>
</tr>
</tbody>
</table>
Get identified as the expert in contingent workforce program management with CCWP. Sign up for certification or training.

Upcoming CCWP Certification & Training Classes:

<table>
<thead>
<tr>
<th>Date Range</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 14th &amp; 15th (Tue/Wed)</td>
<td>Chicago, IL</td>
</tr>
<tr>
<td>August 11th &amp; 12th (Tue/Wed)</td>
<td>Washington, DC</td>
</tr>
<tr>
<td>Oct 6th &amp; 7th (Tue/Wed)</td>
<td>London, UK</td>
</tr>
<tr>
<td>Oct 21st &amp; 22nd (Wed/Thur)</td>
<td>Dallas, TX</td>
</tr>
<tr>
<td>Dec 8th &amp; 9th (Tue/Wed)</td>
<td>Northern California</td>
</tr>
</tbody>
</table>

SAVE WITH THE CODE: SUMMER

www.staffingindustry.com/certification
IT'S OKTOBERFEST IN DALLAS!

We are offering three events at the same time in the same place!

CWS Summit North America
Leadership & Execution, Innovation, and Integration tracks and, for the first time, a track devoted to case studies.

CW Solutions Forum
Risk, Technology & Data Analytics tracks plus new Express Solution Sessions during which attendees will select the sponsors with whom they would like to meet.

CCWP Class
An accreditation program in contingent workforce program management, an essential credential for anyone involved in managing corporate contingent staffing.

For more information, visit www.cwssummit.com
• Copies of the slides and a link to the audio recording will be distributed to all attendees within 48 hours following the webinar

• A replay of the webinar will be available for CWS Council Members at www.staffingindustry.com

• Research links:
  - SIA Insight: U.S. Affordable Care Act Reporting Requirements and Subsidy Notices
  - Temporary Worker Survey: Current & Planned Participation in Healthcare Exchanges