

NATIONAL ASSOCIATION OF PERSONNEL SERVICES

Independent Study Course Number 29

This independent study course is offered to certificate holders and members of the National Association of Personnel Services (NAPS). By completing this course, individuals can earn Continuing Education Units (CEUs) that can be applied toward the maintenance requirement that NAPS has instituted for individuals receiving the Certified Personnel Consultant (CPC) and Certified Temporary – Staffing Specialist (CTS) designations after January 1, 1995. All individuals will be required to complete the examination section of this independent study course to receive credit. Those achieving a passing score on the examination will receive the .2 CEUs associated with this particular course. In addition, .2 CEUs can be earned by completing the special assignment outlined on the last page of the course. Refer to the registration instructions on the last page of this study course for additional instructions.

FOREWARNED AND FOREARMED

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NAPS General Counsel*

My profession (law) and yours share a common burden; that is, our clients are never particularly happy about having to deal with us in the first place, and often put off seeking our assistance until the problem defies solution. Well, maybe this article can help a little. Consider it as a sketchy outline of a legal audit. It consists of a number of questions about various aspects of your operation. There are no right or wrong answers; the point is to see whether you have, in place, a written document which provides the agreed upon answer for any of these questions, then you are leaving it up to a judge or jury to help run your business by deciding how your relationship with your customers shall be structured.

For example, you should be able to find a clear, written answer to each of the following questions in your contract with your employer/clients:

1. What must I do to earn a fee?
2. Within what time period must I earn my fees? To what activity does the time period relate?
3. What happens if my client hires the candidate for a position other than that for which he was referred, or that which was described in the job order?
4. What happens if the client retains the candidate as a “consultant” or “independent contractor” or uses him or her through a temporary help service?
5. What happens if the candidate is hired by a company affiliated with my client?
6. What happens if the candidate is hired by a company not affiliated with my client, but as a result of a referral by my client?

7. What should I do if my client learns of the availability of other personnel from my candidate, and hires one of those persons mentioned by my candidate?
8. To what extent do bonuses, stock options and other incentives and fringe benefits count in determining the amount of my fee?
9. If I sue and win, am I entitled to my attorney's fees?
10. If my client is located out of state, where can I bring suit?
11. What happens if I offer a "replacement guarantee" and cannot come up with a replacement that the client likes? What if the client hires a replacement internally?
12. Am I liable if my candidate has lied on the resume?
13. Who is responsible to check references? What about verification of degrees? Criminal records?
14. How can I establish that my client has agreed to the provisions contained in my contract?

To the extent that you do not have a written document from which the answer to any of the above questions is obvious, you have failed to anticipate a problem likely to arise at a later date. If you are a provider of temporary help, can you find evidence of your client agreement on the following subjects?

1. Is it clear that the client owes a fee if it hires or otherwise utilizes the services of your temp?
2. Is it equally clear that this fee is owed if the temp continues to work for your client as the employee of a competing temporary help service?
3. It is clear that you are the employer of the temps?
4. Does the agreement restrict the client's right to require temps to work overtime or make it clear that the client will have to pay an increased rate if the temp works overtime? What constitutes "overtime"?
5. Does the agreement withhold authority from the client to entrust the temp with valuables?
6. Does the agreement withhold authority from the client to allow the temp to operate motor vehicles in the course of his or her employment?
7. Does the agreement provide for prompt reporting of any claims one party may have against the other?
8. Does the agreement acknowledge that the client, and not you, is responsible for compliance with the Occupational Safety and Health Act?
9. When the client signs the agreement, does it acknowledge that it was satisfied with the temp's work?

A legal audit can show whether you have prepared yourself to deal with all of the problems which you might encounter in dealing with your own staff. For example, do you have written documents which show the answers to the following?

1. Can you fire your employees because you wake up one morning feeling like it, or must you have a good reason?
2. When employment terminates, is the former employee entitled to commissions on placements which have been invoiced, but not yet collected?
3. Is he or she entitled to commissions if the employer and candidate have agreed concerning the hire, but the employee has not yet reported to work, and the client has not yet been invoiced?
4. Suppose the candidate has been interviewed, but not yet hired, is the former employee entitled to a commission if the client later hires the candidate?
5. Can you wait to pay the former employee until after the expiration of any appropriate guarantee periods?
6. Does the agreement make it clear that you have the right, and are the only one who has the right, to make deals with clients concerning fees, guarantees and the like, and that it is just too bad if that affects the employee's commission?
7. Does the agreement make it clear that you have the sole and absolute power to determine the results of disputes between consultants over who is entitled to a fee?
8. Is it clear that certain of the firm's assets are trade secrets usable only in furtherance of the firm's business?
9. Are there restrictions on what a consultant can do competitively after termination of employment, and are these restrictions easily understandable?
10. Can you change the employee's compensation arrangement without his prior consent?

Space does not permit a discussion of all of the aspects of the relationship between a temporary help service and its temps which should be in writing somewhere. In this day and age there may indeed be dangers in having a poorly drafted personnel manual, but a properly drafted set of policies and procedures is a necessity for a business trying to prevent successful litigation against it. Just a few of the issues which must be dealt with a personnel policy manual are:

1. A statement of the employer's rules for implementation of Family and Medical Leave Act leaves of absence. For example: is the twelve-month period during which an employee can take twelve weeks; leave properly defined?
2. A policy addressing the means of dealing with sexual and/or racial harassment in the workplace. Do your employees know how and to whom to complain? Do you provide alternative means of complaining?
3. A clear statement that all employees are employees at will, with the added proviso that you will immediately end any assignment upon receiving a lawful request to do so from the client.
4. A drug and/or alcohol testing policy
5. An explanation of the employee's duty not only to follow whatever rules and regulations you may set forth from time to time, but to be aware and to follow appropriate rules and regulations of the client to which he or she is assigned.
6. A rule making it clear that the employee is not to work overtime without your prior permission.

7. A rule making it clear that the employee is not to handle a client's money, or operate a client's vehicle, without your prior permission.
8. Rules setting forth the extent to which the employee is to report to you or the client regarding illness, lateness, complaints or other workplace issues.
9. An explanation of the employee's duty to report back to you for additional work upon completion of any assignment.
10. An explanation of how and to whom the employee is to report on-the-job injuries, as well as any list of company approved doctors who might treat the employee.
11. A non-discrimination policy covering all classes protected by appropriate federal, state, and local law.
12. Dress codes, if any, or other basic rules of workplace conduct.

To the extent your self audit further aggravates any ill feelings you might hold toward my profession, I disclaim responsibility; to the extent it reveals a need for corrective measures, I will not claim to be displeased.

CONTINUING EDUCATION UNIT (CEU) REGISTRATION

Complete the registration information below and forward this page, containing the independent study examination and your answers, plus payment to: NAPS, 3133 Mount Vernon Avenue, Alexandria, VA 22305. The processing fee for the continuing education units for each NAPS independent study course is \$10 for members and \$20 for non-members. Feel free to reproduce the registration and examination page to allow additional individuals to apply for CEUs.

Name: _____ Phone: () _____
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Current NAPS member \$10 Non-member \$20

EXAMINATION QUESTIONS

Multiple-choice questions. Circle the response you believe to be correct.
Be certain to answer all of the questions.

According to attorney Styles, which of the following questions should be addressed in a staffing firm's contract with its employer/clients?

- | | Should be addressed | Does not need to be addressed |
|---|----------------------------|--------------------------------------|
| 1. What happens if my client hires the candidate for a position other than that for which he/she was referred? | | |
| 2. Within what time period must the staffing firm earn its fees? | | |
| 3. What happens if the staffing firm is unable to refer any qualified candidates? | | |
| 4. To what extent do bonuses, stock options, and other incentives and fringe benefits count in determining the staffing firm's fee? | | |
| 5. Who is liable if the candidate commits an act of sexual harassment on the job? | | |

Which of the following questions should be addressed in a contract pertaining to a staffing firm's relationship with its clients?

6. When the client signs the agreement, does it acknowledge that it was satisfied with the temp's work?
7. Is it clear that the staffing firm is the employer of the temp(s)?
8. Does the agreement restrict the client's right to require temps to work overtime or make it clear that the client will have to pay an increased rate if the temps work overtime? Is "overtime" defined?

Which of these questions, according to Styles, should be documented when a staffing firm is dealing with its own staff?

	Documents should provide answers	Documents not required
9. Is it clear that certain of the firm's assets are trade secrets usable only in the furtherance of the firm's business?		
10. Are there restrictions on what a consultant can do competitively after a termination of employment, and are these restrictions easily understandable?		

Which of the following relationship issues must be dealt with in a policy manual?

	Must be included	Does not have to be included
11. References to legal holidays.		
12. A non-discrimination policy covering all classes protected by appropriate federal, state, and local laws.		