



March 2015

How to Protect Your Business from Staffing Company Wage and Hour Violations

by Susan Arduengo, Associate, Friedman Stroffe & Gerard, P.C.



Businesses that utilize staffing companies should pay close attention to Assembly Bill 1897 (“AB 1897”), which took effect on January 1, 2015. The law imposes joint liability on both the staffing company and the business for the staffing company’s wage and hour violations and/or failure to secure workers’ compensation coverage.

AB 1897 applies to businesses with 25 or more workers, when at least 6 of those workers are provided by a staffing company to “perform labor within its usual course of business.” For action sports manufacturers and retailers, the law applies to workers obtained through a staffing company including wholesale, production, warehouse, operations, and sales force workers, amongst others.

Businesses may wrongly assume that their staffing companies alone are liable for wage and hour violations with respect to the workers that the staffing company provides. However, this new law was designed to hold action sports companies and other businesses that benefit from contracted labor accountable for wage and hour violations committed against workers.

Action sports companies must be cognizant of the fact that shared liability may be imposed even when the business is unaware of its staffing company’s violations. As an example, if a staffing company fails to timely pay wages, including overtime, or fails to provide proper meal and rest periods to its workers, the action sports company that benefits from that labor may be held jointly liable to the worker. Similarly, a business also shares liability for its staffing company’s failure to secure adequate workers’ compensation coverage.

Best Practices for California Action Sports Companies

Although AB 1897 no doubt seems overly harsh – requiring that a business share liability with its staffing company, even when the business had no knowledge of the staffing company’s workplace violations – a business can protect itself in a number of ways, for example:

How to Protect Your Business from Staffing Company Wage and Hour Violations (continued)

• Exercise Due Diligence in Selecting a Reputable Staffing Company

Although validating workers' compensation coverage is fairly straightforward (request a copy of the staffing company's current workers' compensation policy and updated copies if the business relationship continues), greater effort must be taken to verify that the staffing company's pay practices are compliant with California law. Suggestions include requesting a sample of previously issued wage statements and W-2s (to ensure the proper withholding of income), as well as actual time cards documenting compliant meal periods for the staffing company's workers, although these tactics would only illuminate past wage and hour violations and not necessarily indicate the propensity for future violations. Be sure to request that the staffing company redact all sensitive employee information prior to disclosure. Moreover, investigate whether the staffing company has Employment Practices Liability Insurance ("EPLI") – and whether an exclusion or endorsement for wage and hour claims applies. If there is an exclusion there would be no insurance coverage for wage and hour violations.

• Insist on an Indemnification Provision in the Staffing Agreement

While a blanket waiver of AB 1897 is unenforceable, the law allows for indemnification between a business and its staffing company. Action sports companies should always contract for indemnification from their staffing companies for the staffing company's violation of wage and hour laws. Although not exhaustive, an indemnification policy should at a minimum state that the staffing company agrees to indemnify the business for any claims, losses, damages, civil actions, or administrative claims, including court costs and attorneys' fees, arising from the staffing company's failure to pay wages in accordance with all applicable laws or secure sufficient workers' compensation coverage. Further, to help ensure a proper defense in the event of litigation, action sports companies should insist on a choice of counsel provision within their staffing agreements.

If your staffing agreements require revision in light of AB 1897 or you are unsure of the effect that this new law may have on your business, you should immediately contact competent employment counsel.

About the Author:

Susan Arduengo is an associate at Friedman Stroffe & Gerard, P.C., a leading law firm serving the action sports industry. She works closely with shareholder Robert Gerard and the rest of the firm's Employment and Labor practice group. Susan specializes in representing action sports manufacturers and retailers in all aspects of employment law, including counseling/advice, compliance, litigation prevention, single plaintiff litigation, and class actions. Contact her at sarduengo@fsglawyers.com or 949.265.1133.

This article is for informational purposes only and not for the purpose of providing legal advice. You should contact legal counsel to obtain advice with respect to your particular issues.