

STAFFING GROUP

Alert: Staffing Companies are Facing Increasing Exposure in Class Action Suits

Staffing Companies are increasingly at risk of being named as defendants in class action law suits filed by applicants and employees. To protect against liability in such law suits, staffing companies must implement on-boarding best practices designed to ensure compliance with the myriad of employment-related laws, for example, the Americans with Disabilities Act and the Fair Credit Reporting Act. As is generally true in our industry, best on-boarding practices must consider both the procedures employed by staffing companies and by their customers and clients where placements are made.

Compliance alone, however, does not protect entirely against the filing of such suits or the unexpected litigation costs of defending a class action suit. The best defense to the filing of class action suit is an express waiver, that is, a contractual prohibition on the participation in such suits that is signed by the applicant or employee.

The law in this area is in flux, but class action waivers are generally enforceable only in conjunction with arbitration provisions that comply with the Federal Arbitration Act and corresponding state law. Courts favor arbitration because it keeps cases out of court, and so courts will generally enforce reasonable arbitration provisions that include class action waivers. While arbitration provisions will require all disputes with applicants and employees to be resolved by arbitration and not in the courts, staffing companies must consider whether this is a necessary price to pay to obtain a class action waiver. When staffing companies decide to implement class action waivers, the associated provisions must be plain, prominent and specific such that the applicant or employee has been clearly and specifically put on notice of the rights that are being waived.

If you are considering an arbitration provision or a class action waiver or are unaware of the risks posed to staffing companies by or class action suits, we urge you to consult us to design the best option for your company to protect against this increasing risk to the bottom line.

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