

6 elements staffing firm contracts must include



When negotiating contracts with employee outsourcing firms, many organizations make background checks an afterthought and leave the specifics up to the agency. That's a big mistake.

Routine checks by the agencies typically don't offer enough legal protection.

That's why you need specific language in the contracts that shields your organization. The more you outsource, the greater your legal risk.

The number of lawsuits involving outsourced workers is rising. *Examples:* An Indiana magazine company lost a lawsuit after using an employment agency to hire a salesman who murdered a customer. The employer was unaware of his criminal record.

In California, temporary call-center workers were indicted after stealing thousands of dollars donated for disaster relief.

Such lawsuits usually blame both the staffing agency and the hosting employer. To protect your organization from legal action, negotiate staffing contracts that do the following:

1. Spell out what background checks should cover

Specify areas such as criminal records, driver's licenses and references. Don't hesitate to list the same procedures that you use to screen your employees. Include the name of a reputable screening agency, preferably one that's provided good results for you.

That's especially important if your workplace deals with sensitive information, says Craig Annunziata, managing partner in the Chicago office of employment law firm Fisher & Phillips.

His advice: The contract language specifying background-checking procedures should begin with, "At a minimum, the agency shall" That prevents the firm from later using its compliance with your procedures as a defense.

2. Include an indemnification clause

It should state that the agency covers legal expenses and judgments arising from lawsuits involving the

employees it provides.

“Many agencies don’t unilaterally provide such assurance. You often have to extract it,” says Florida employment lawyer Eric Gabrielle, a partner at Stearns Weaver Miller Weissler Alhadeff & Sitterson.

3. Attach your organization to the agency’s liability coverage

Most contracts cite the agency’s liability and general liability insurance. Make sure the agreement adds your company as “additional insured” to those policies.

4. Guarantee that you can review the results of background checks

Contracts should allow you to get a signed release from employees to read individual reports and any related documentation.

5. Allow you to terminate the contract with 30 days’ notice

Watch for language that doesn’t permit termination for unsatisfactory services, or allows it under certain circumstances.

6. Comply with federal and state laws

The contract should state that the agency conducts background checks in compliance with the Fair Credit Reporting Act, and obeys federal and state laws in such areas as payroll practices, minimum wage and overtime.