

STAFFING INSURANCE

WINTER 2005 VOLUME 10 / ISSUE 1

News



On the Web: www.worldwidefacilities.com

Message from Our Chairman

The staffing industry is enjoying increased prosperity. What's more, insurance rates are about as stable as they have been in the last several years, giving you more flexibility in pricing your business. While this is good news, there is always the temptation to throw caution to the wind.

This issue of Staffing Insurance News is all about protecting you from loss due to exposures passed on to you by your client. We show you some of the pitfalls to avoid.

Contractual liability is fast becoming a serious problem for the staffing industry. With clients looking for ways to transfer their own exposures, how your contract with your client is worded is more important than ever.

And while legal counsel is imperative when signing any contract, it's no safeguard that you won't inadvertently take on your client's risk. Talk over any contracts with your insurance broker. Pay special attention to additions/exclusions. See our claim examples and how this can be brought home to you.

We hope to make you a savvy insurance buyer, or at the very least give you something to think about the next time you sign a contract. As always, we're here to answer your questions and to guide you through your coverage options. We at World Wide Facilities appreciate your business and your trust.

Best,
Eileen Lesberg

The Next Insurance Crisis

If you think workers' comp is your biggest insurance concern, you may be in for a costly surprise. Contractual liability – the willingness of a staffing firm to assume the liability of the client company via contract – is fast becoming a large exposure for staffing firms.

Staffing companies routinely sign contracts that exceed the extent and intent of their insurance coverage. As a result, they place themselves and their company in serious jeopardy. Small firms or new businesses may sign in an effort to remain competitive or to get the job. Larger firms may sign due to a lack of internal controls. But, no matter the size of your company assuming the risk of your client can have potentially disastrous impact on your business.

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Words for the Wise

Even a quick look at a client's proposed contract can reveal some verbiage that should raise a red flag and alert you to the need for a more in-depth review. Some of the words and phrases you should look for include:

Hold Harmless

A "hold-harmless" agreement is a contract provision that transfers liability from one party to another. The agreement states that one party will assume the other's liability arising under or because of the contract. The extent to which one holds another harmless varies from contract to contract, job-to-job, etc. To assume the liability of another, regardless

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A Case In Point

A staffing firm signed a contract to provide janitorial services to a sports arena, providing supplemental staff to the arena's janitorial personnel on an "as needed" basis. The terms of the contract provided that the staffing firm would hold the arena harmless under any circumstances provided the firm had an employee on the premises at the time an accident occurred. One evening a patron was injured after slipping on a spilled drink. The staffing employee was not working in the section of the arena where the accident occurred.

The injured party sued the arena; the arena tendered the claim to the staffing firm. Because of the contractual obligations and terms, the firm was liable for the loss.

A staffing employee was assigned to work for a rail transport company. While climbing the ladder on a freight car, the employee (and subsequent plaintiff) slipped and fell, causing serious injuries. The slip occurred because the client had not maintained the ladder, and there was grease on the frame.

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Before You Sign the Dotted Line...

As a cautious and proactive business owner, you may feel confident that you are performing your "due diligence" by contacting your attorney before signing a client's custom contract. But the truth is, you'd only be partially right. While it's always wise to seek legal counsel before signing any contract, in this case your attorney's "rubber stamp" is simply not enough to ensure your protection. Why? Because your company may, in theory, have the coverage(s) needed to cover certain contractual liability situations, the broader nature of a claim tendered may go beyond the intent and extent of that coverage. Ultimately, it's up to you to see that you don't promise your client protection that you cannot – and should not – deliver.

With the proliferation of and mounting pressure to sign client contracts, it's crucial for staffing firms to remain mindful of the very real danger posed by contractual liability.

Client contracts are specifically written to transfer as much risk as possible to the staffing firm and signing them can pose a significant risk to your company – and possibly your own personal assets. Regardless of your desire to keep your customers satisfied, you must recognize that there are some contractual "promises" that you simply cannot keep.

Signing your client's contract doesn't have to be an "all or nothing" situation, though. After reviewing the proposed contract with your lawyer, you may be able to suggest alternative language that might alleviate some of your client's concerns without putting your own company in harm's way. Most importantly, you must be absolutely certain that if you do assume any liability on your client's behalf, you agree to do so only if the basis for the client's claim was due to the negligence of either your employee or your staffing firm. This is really the only instance in which assuming liability can be reasonable expected and justified.

Insurance Crisis

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Client companies have become adept at redirecting liability for many exposures to the staffing company. Many of those exposures do not “belong” to the staffing firm. Unfortunately, staffing firms have not recognized the alarming implications in this transfer of risk. Recent trends in claims indicate that the ramifications of contractual liability are far broader and far more damaging than a simple signature on a client contract.

Be on the safe side – before making any decision, obtain a clear explanation of what your client is expecting of you – in writing. Once received, review with your attorney and insurance representative how those expectations impact your insurance coverage, and your business. Even the seemingly simple action of adding your client as an additional insured leaves you vulnerable by “sharing” your coverage and limits in situations that you have no control over. This could leave you without sufficient limits for situations that you do.

It is important to remember that as a staffing firm, your responsibility is to provide and insure the worker that your client asks for and the acts of your business...period. That is how your insurance coverage is structured. Your insurance policies are contracts between your insurance carrier and you. They are not between your carrier and your client. Policies are written and offered based upon underwriting criteria applied to your company for your business – not the business of your client.

Finally, be certain to take all precautions and perform due diligence when entering into a contract with a client. After all, the ultimate cost of your premiums and the future availability of your coverage depends on both.

Words for the Wise

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of extent, is a voluntary undertaking that increases your exposure to loss.

Waiver of Subrogation

Indicates the named insured’s intentional relinquishing of any right to recover damages from another party who may be responsible. An example of how this might adversely impact a staffing firm – staffing employee is injured on the client premises – hand severed because the client had removed the safety guard from a machine. Staffing Firm WC will pay for the injury, and the cost would be considerable. However, with a waiver of subrogation in place, the staffing firm or their insurance carrier could not recover any damages from the party responsible for the accident (client company). Commercial insurance policies must be endorsed to recognize a waiver prior to a loss.

Additional Insured

Refers to a person or entity, other than the named insured, which is protected by your policy, most often in regard to a specific interest. When in doubt, check with your broker.

These are just a few areas of concern that you may discover when reviewing a client’s proposed contract. Another caution: be leery of any suggestion that your insurance is expected to respond regardless of fault. If you are willing to assume a transfer of risk, specify the circumstances – i.e only when it arises out of your sole negligence. Without stated parameters, you can become responsible for not only the failings or misdeeds of your own employee or firm, but those of your client, their employees, vendors, visitors and products, as well.

A Case In Point

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The client, sued by the employee, tendered the claim to the staffing firm for coverage. Although the plaintiff's injury was due to the failure or negligence of the rail transport company, the insured's contract had a provision that stated they would "defend and indemnify and hold harmless" the client company "from and against any and all liability, damages, claims, suits, judgment costs expenses and losses resulting from injury or death of the insured's agents, employees, servants, regardless of cause and whether caused directly or indirectly by the negligence of the client company, its agents, servants or employees".

Coverage counsel determined that the language of the contract required a coverage obligation.

Got Questions? Ask World Wide!

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