



ASA Certification

# **Video Module Study Tool Workbook**

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Participant Name

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Company

American Staffing Association

*This book is intended as information and not as legal advice. Readers requiring legal or other advice regarding the matters discussed in this book should consult with experienced legal counsel.*

American Staffing Association  
277 S. Washington St., Suite 200  
Alexandria, VA 22314-3675  
703-253-2020  
703-253-2053 fax  
*americanstaffing.net*

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# Overview

Welcome to the ASA Certification Video Module Study Tool workbook.





This program is designed to complement individual study or assist a group in preparing for the Certified Staffing Professional<sup>®</sup>, Technical Services Certified<sup>SM</sup>, or Certified Health Care Staffing Professional<sup>®</sup> exam. The ASA Certification Video Module Study Tool focuses on federal employment law issues only. ASA certification programs require staffing professionals to demonstrate knowledge of both federal and state employment and labor law. CSP<sup>®</sup>, TSC<sup>SM</sup>, and CHP<sup>®</sup> candidates should review other ASA certification study resources in conjunction with the use of this program in preparation for the exam. In addition, CSP, TSC, and CHP candidates should review the ASA Code of Ethics and Good Practices.

The program consists of four modules as outlined below. Each module outlines a variety of activities that can be facilitated approximately in a 1.5 hour preparation meeting per module.



1. Discrimination and Workplace Harassment.....Page 5
2. Wage and Hour, and Immigration and I-9.....Page 14
3. Drug Testing, Hiring, and Employee Handbooks.....Page 22
4. Workplace Safety, Family Medical Leave Act, and Worker Classification.....Page 33

# Facilitation Guidelines

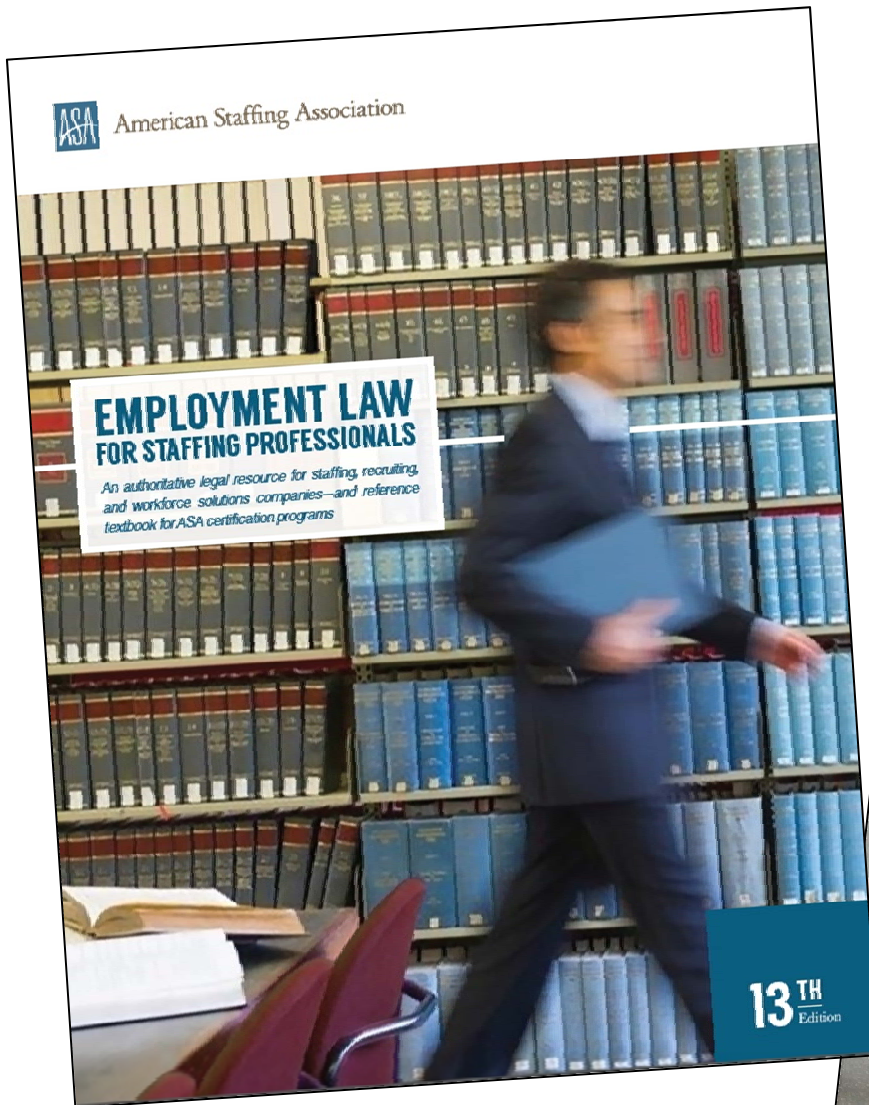
Each module includes prereading, a kickoff activity, a course recording, discussion questions, scenarios, and knowledge check questions. The materials are flexible and can be used in a variety of ways. Facilitation suggestions for each activity are listed below.

<p><b>Prereading</b></p> 	<p>The beginning of each module identifies associated chapters in the books:</p> <ul style="list-style-type: none"> <li>▪ <i>Co-Employment: Employer Liability Issues in Third-Party Staffing Arrangements</i> (8<sup>th</sup> Edition) by Edward A. Lenz, Esq.</li> <li>▪ <i>Employment Law for Staffing Professionals</i> (13<sup>th</sup> Edition) by American Staffing Association</li> </ul> <p>Instruct participants to review the identified chapters prior to attending the meeting.</p>
<p><b>Kickoff Activity</b></p>  <p><i>Approximate time per module: 10 minutes</i></p>	<p>Each module begins with a kickoff activity, which should be conducted prior to viewing the recording.</p> <p>Break participants into two groups. Instruct participants to answer the module slide questions as a group. Participants should document responses to each question in their workbook.</p> <p><i>Note: To reduce meeting time, this activity can be assigned to participants as prework to be completed prior to the meeting.</i></p>
<p><b>Recording</b></p>  <p><i>Approximate time per module: 20 minutes</i></p>	<p>There are four modules of this Certification Video Modules Study Tool—featuring ASA general counsel, Stephen Dwyer and ASA assistant general counsel, La Tanya James-Rouse.</p> <p>After participants have documented their answers to the questions, play the corresponding module recording. The correct answers are revealed in the recording. Instruct participants to document the correct answer as appropriate. Following the recording, it is suggested that a facilitator debrief the class by discussing slide questions answered incorrectly.</p> <p><b>To view the recording:</b> To review the recordings online, visit <a href="http://americanstaffing.net/videomodulestudytool">americanstaffing.net/videomodulestudytool</a>. Click on the title of the Module to view. You will see the slides loading onto your screen, and the recording will begin playing.</p> <p>Once started, you can advance to different sections of the module, pause, stop, and start the recording by clicking on the appropriate features.</p>
<p><b>Case Study</b></p>  <p><i>Approximate time per module: 20 minutes</i></p>	<p>Each module contains two case studies. Following the recording, break participants into two or four groups if the meeting is large. Assign each group a case study. Instruct participants to read their assigned case study and answer the associated questions as a group. Allow 5-7 minutes. Instruct each group to present their case and answers. Compare the group's answers to the answer key contained at the end of the module.</p>



<p><b>Discussion Questions and Scenarios</b></p>  <p><i>Approximate time per module: 15 minutes</i></p>	<p>The case study is followed by discussion questions and scenarios. These can be delivered either in a Q&amp;A style with the entire class or distributed among breakout groups following the same format as the case studies.</p> <p>After the questions have been answered, compare the class's answers to the correct answers located in the answer key at the end of the module.</p>
<p><b>Knowledge Check Questions</b></p>  <p><i>Approximate time per module: 15 minutes</i></p>	<p>Each module ends with 15 knowledge check questions. An answer key is located at the end of each module.</p> <p>There are two suggested facilitation methods for using these questions.</p> <ol style="list-style-type: none"> <li>1. <b>Knowledge Check Quiz:</b> At the end of the study session pass out the knowledge check questions to participants. Instruct participants to answer each question individually. After all participants have completed the knowledge check, review the correct answers as a large group.</li> <li>2. <b>Game Format—Knowledge Check Challenge:</b> Break participants into two groups forming two lines. Alternate asking the individual at the front of the line a knowledge check question. Each correct answer earns the team one point. For each incorrect answer, the team's score is reduced by one point. After each individual answers, he or she moves to the back of the line. The group with the most points wins the knowledge check challenge.</li> </ol>





## Module 1:

### Discrimination and Workplace Harassment

**Prereading** Prior to the module, participants should review:



- *Co-Employment: Employer Liability Issues in Third-Party Staffing Arrangements* (8<sup>th</sup> Edition) by Edward A. Lenz, Chapter 2
- *Employment Law for Staffing Professionals* (13<sup>th</sup> Edition) by American Staffing Association, Chapters 1 & 2

Instruct participants to review these chapters prior to attending the meeting.



## Module 1: Kickoff Activity and Recording

Prior to viewing the recording, review each of the following questions and select your answers. Then compare your answers to the correct answers revealed on the recording. An explanation for each answer will be given in the recording.

### Discrimination

1. You just learned that a temporary employee has filed a discrimination charge against your company. You believe it must have been a misunderstanding. What should you do?
  - a. For damage control purposes, reassign the temporary employee immediately
  - b. Continue to place the employee as if she had not made the discrimination charge
  - c. Refrain from placing the employee until the charge has been resolved
  - d. Continue to place the employee, but protect your customers by letting them know that the employee has filed a charge
2. Your staffing firm has 25 internal employees and over 150 temporary employees per year. Do you have to complete an EEO-1 report?
  - a. No
  - b. Yes
  - c. Only if the firm is a government contractor
  - d. What's an EEO-1 report?
3. Which of the following generally is not a BFOQ?
  - a. Religion
  - b. Age
  - c. National origin
  - d. Sexual orientation
4. Your firm's client blatantly discriminates by refusing to hire candidates of a certain national origin. Your client maintains that it is not a joint employer and therefore cannot be liable. Assuming the client is not, in fact, a joint employer, it:
  - a. Cannot be liable under a disparate treatment theory
  - b. Can still be liable
  - c. Cannot be liable because liability flows from employment status
  - d. Cannot be liable if it does not take part in the hiring process
5. Your staffing firm decides it would be a good idea to select whom to drug test based on the individuals' respective home addresses. This practice:
  - a. Is lawful
  - b. Is unlawful under U.S. postal law; specifically, the ZIP Code rule
  - c. Could constitute unlawful disparate treatment
  - d. Could constitute an unlawful disparate impact

6. In order to better remember candidates, your staffing firm maintains pictures of candidates in its employment files and makes notations regarding how they look. This practice:
  - a. Is a good industry practice
  - b. Is per se unlawful
  - c. Is lawful so long as the candidates are good looking
  - d. Is legally suspect
7. Which of the following is *NOT* a protected category under federal law:
  - a. Pregnant women
  - b. Seventh Day Adventists
  - c. Russians
  - d. Communists
8. You fire your recruiter, age 42, and hire a 53-year-old as her replacement. The fired recruiter may:
  - a. Be able to successfully sue for age discrimination under the ADEA
  - b. Be able to successfully sue for age discrimination under the ABA
  - c. Not successfully sue for age discrimination because her replacement is older than she is
  - d. Be eligible for AARP membership
9. The duty to provide for a reasonable accommodation under the ADA generally will fall on:
  - a. The staffing firm
  - b. The customer
  - c. The staffing firm and the customer
  - d. It depends

## **Workplace Harassment**

10. You assign a man to one of your best clients. Each day of his assignment he complains to you that he is being harassed by a male colleague. You do nothing. Should you worry?
  - a. No, because he has no claim for harassment under Title VII
  - b. No, because your client's employee is doing the harassing and therefore your client has responsibility
  - c. Better believe you should
  - d. Yes, because sexual orientation discrimination is covered under the federal Sex Orientation Act of 2007
11. Your boss has propositioned you and intimated that you will receive a raise if you accept. Your firm:
  - a. Is liable
  - b. Is not liable for the actions of its supervisors
  - c. Can escape liability if it promptly investigates
  - d. Can escape liability if it disciplines or fires
12. When conducting a harassment investigation, which of the following should you *NOT* do?
  - a. Interview the alleged victim
  - b. Interview the alleged harasser
  - c. Wait before investigating to allow tempers to cool and feelings to heal a bit
  - d. Interview third parties such as potential witnesses and those who have relevant knowledge

13. An employee has a controversial religious statement prominently displayed on a calendar posted in his workstation, visible to both co-workers and visitors to the office. Several co-workers have complained that they find the statement very offensive and disparaging to people of other faiths. Can you ask the employee to remove this from display?

- a. Yes, if the display constitutes harassment
- b. No, because this would violate the First Amendment
- c. No, because this would violate your duty to provide religious accommodations
- d. No, because an employer must be tolerant of all religious statements and conduct



Watch recording



# Module 1: Case Studies

Review the case studies below and answer the associated questions.

## Case Study 1

FedCo Staffing is a large staffing firm employing thousands of people across the U.S. ABC Co. is FedCo Staffing's client.

Joanne is a temporary employee who has been placed by FedCo Staffing to work at ABC Co. Joanne called her staffing coordinator at FedCo Staffing and expressed that she feels she has been sexually harassed.

1. What are the two types of sexual harassment?
2. Would FedCo Staffing and ABC Co. typically be considered joint employers regarding issues of workplace harassment?
3. What steps can FedCo Staffing take to limit harassment liability?
4. Faced with this situation, what steps can FedCo Staffing take to avoid liability?

## Case Study 2

FedCo Staffing is a large staffing firm employing thousands of people across the U.S. ABC Co. is FedCo Staffing's client.

ABC Co. shares with Fedco Staffing that it is working to improve the diversity of its work force and requests Fedco Staffing to only refer candidates who are in a protected class.

1. It is lawful to only place candidates of a minority status?
2. What is the best approach to handling the situation with Fedco?

# Module 1: Discussion Questions and Scenarios

## Discussion Questions

1. What are the four major antidiscrimination laws?
2. How many employees must an employer have to be covered under Title VII?
3. What does ADEA stand for?
4. What is the legal term for a test that on the surface is neutral, but that results in disproportionately eliminating individuals from a protected class?

## Scenarios

Describe the most appropriate and lawful way to handle each of the following scenarios.

1. While placing an order for a shipping clerk, your client tells you he prefers a man because the job requires a great deal of lifting.
2. Your temporary employee shares with you that she is being retaliated against for complaining about some inappropriate photos displayed in people's cubicles on the job where she has been placed.

Answer the question below.

3. Julie just filed a workers' compensation with FedCo Staffing. Can FedCo lawfully terminate Julie for filing the claim? Why?



# Module 1: Knowledge Check

Answer each of the following questions as true or false.

1. \_\_\_\_\_ Generally, the client and staffing firm are considered co-employers regarding equal employment opportunity issues.
2. \_\_\_\_\_ Generally, both staffing firms and their clients have obligations under the law regarding workplace harassment.
3. \_\_\_\_\_ Title VII of the Civil Rights Act prohibits discrimination on the basis of race, national origin, color, sex, and religion.
4. \_\_\_\_\_ All staffing agencies with 15 or more employees are covered under Title VII.
5. \_\_\_\_\_ Pregnancy should generally be treated the same as other temporary disabilities.
6. \_\_\_\_\_ Reasonable accommodation may be required for religious observation.
7. \_\_\_\_\_ Disparate impact is when a person is treated differently because he or she is a member of a protected class.
8. \_\_\_\_\_ Under federal law, employers are prohibited from discriminating against individuals based on genetic information.
9. \_\_\_\_\_ Many federal and state statutes provide employees protection against retaliation.
10. \_\_\_\_\_ It generally is unlawful and considered discrimination for a staffing company to have a policy of not hiring men with beards (unrelated to medical conditions).
11. \_\_\_\_\_ An English-only rule at the workplace may be found lawful if it is justified by business necessity.
12. \_\_\_\_\_ The term “employment at will” indicates the individual is a 1099 independent contractor.
13. \_\_\_\_\_ In the workplace, ongoing jokes that include racial slurs may be considered harassment.
14. \_\_\_\_\_ Quid pro quo harassment must be pervasive to be considered unlawful.

# Module 1—Answer Key

## Case Study—Answers

### Case Study 1

1. The two types of sexual harassment are hostile work environment and quid pro quo.
2. Yes. Typically FedCo Staffing and ABC Co. would be considered joint employers for issues of workplace harassment.
3. To limit liability, Fedco Staffing can and should have antiharassment policies and procedures and employees should be notified of these.
4. FedCo Staffing should promptly interview the employee (victim) and conduct a joint investigation with the client company. FedCo Staffing and the client should also ensure appropriate actions are taken by the client based on the results of the investigation.

### Case Study 2

1. No. It is unlawful to make hiring decisions based on race, color, sex, age, religion, disability, national origin, citizenship, genetic information, and veteran status.
2. Inform the client respectfully that it is unlawful to make placement decisions based on protected classifications even if the intention is to improve diversity.

## Discussion Questions and Scenarios—Answers

### Discussion Questions

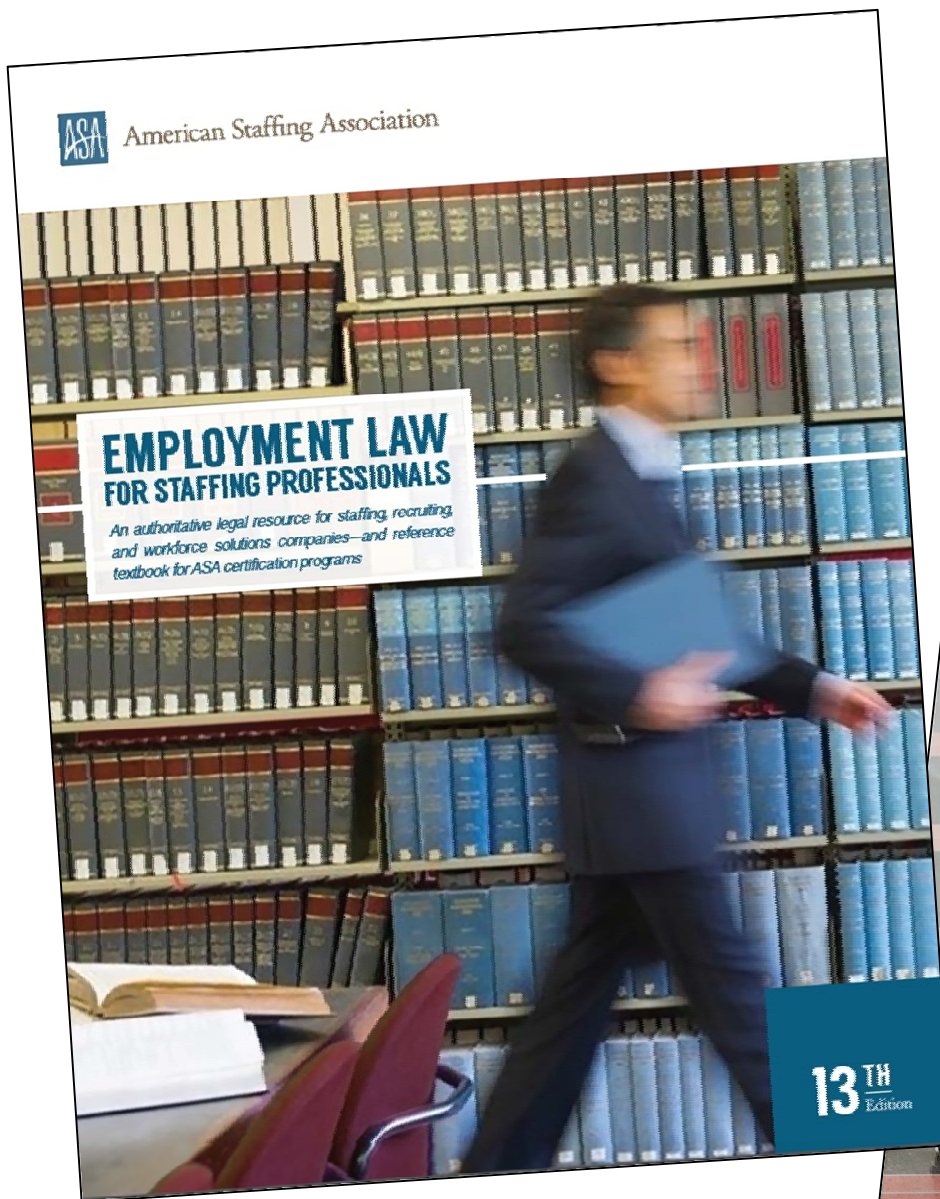
1. The four major antidiscrimination laws are Title VII, Family and Medical Leave Act, Age Discrimination in Employment, and Americans With Disabilities Act.
2. Fifteen or more employees.
3. Age Discrimination in Employment Act.
4. Disparate impact.

## Scenarios

1. Clarify the job requirements and share with the client respectfully that the most qualified candidate will be placed on the job regardless of gender.
2. Investigate the situation immediately by interviewing the temporary employee. The human resources professional at the client company should be contacted immediately to perform a joint investigation.
3. No. It is unlawful to terminate an employee for exercising a statutory right such as filing a workers' compensation claim.

## Knowledge Check—Answers

1. True
2. True
3. True
4. True
5. True
6. True
7. False
8. True
9. True
10. False
11. True
12. False
13. True
14. False



## Module 2: Wage and Hour, and Immigration and I-9

**Prereading** Prior to the module, participants should review:



- *Co-Employment: Employer Liability Issues in Third-Party Staffing Arrangements* by Edward A. Lenz, Chapter 2
- *Employment Law for Staffing Professionals* by American Staffing Association, Chapters 3, 5, 12, & 13

Instruct participants to review these chapters prior to attending the meeting.



## Module 2: Kickoff Activity and Recording

Prior to viewing the recording, review each of the following questions and select your answers. Then compare your answers to the correct answers revealed on the recording. An explanation for each answer will be given in the recording.

### Wage and Hour

1. Your company is quite specific about when time sheets have to be turned in. It is even written in your temporary employee handbook. One of your temporary employees, however, continues to be late turning in her time sheet. Are you required to pay her for those hours for which her time sheet was not turned in if you know the employee performed the work?
  - a. Yes
  - b. No, because refusing to pay her is a lawful disciplinary measure
  - c. No, because payment of wages is contingent on time sheets
  - d. No, because you will not be able to bill your client without the time sheet
2. Under the FLSA:
  - a. Comp time is permissible in lieu of overtime
  - b. Meal breaks are mandated
  - c. Normal travel time to work in the morning is compensable
  - d. Minimum wage generally must be paid
3. A temporary employee can be exempt from overtime if:
  - a. The duties test is met
  - b. The length of service and salary tests are met
  - c. The duties and salary tests are met
  - d. The employee has signed a waiver waiving his or her right to overtime pay
4. If a nonexempt temporary employee works for multiple clients in a week for a total of more than 40 hours:
  - a. The staffing firm alone will be liable for overtime
  - b. The staffing firm and the client for whom the employee worked the most hours will be liable for overtime
  - c. The staffing firm and all of the clients will be jointly liable for overtime
  - d. None of the above
5. Under the per diem regulations, in order to be considered a reimbursement under an accountable plan, which requirements must be met? Select all that apply.
  - a. The cost of the expense must have a business connection
  - b. The cost must be substantiated (employee accounts for expense)
  - c. Employee must be required to return any amounts reimbursed that are in excess of expenses actually incurred
  - d. The per diem may not exceed \$100 per day

## Immigration and I-9

6. If you photocopy I-9 documentation:
  - a. You should do so for all employees
  - b. You may do so for select employees
  - c. You should do so for those employees whom you suspect may be unauthorized to work
  - d. You should keep such documentation in the employees' employment files for ease of reference
7. Can you complete the I-9 form before a candidate is placed on an assignment?
  - a. No
  - b. Yes
  - c. It depends on the type of job to be offered
  - d. It depends on whether you are talking about federal or state immigration law
8. Your staffing firm's client will be liable if the temporary employees you place on assignment are illegal:
  - a. Always
  - b. Never
  - c. If your client knew the workers were illegal
  - d. If your client knew or should have known that the workers were illegal
9. The H-1B Visa is limited to temporary employees seeking to perform services in \_\_\_\_\_.
  - a. Health care (only)
  - b. High tech (only)
  - c. Specialty occupations
  - d. International trade



Watch recording



## Module 2: Case Studies

Review the case studies below and answer the associated questions.

### Case Study 1

John is a temporary employee. In one week he was placed by FedCo Staffing at three different companies as follows.

Company	Hours Worked	Pay Rate
Company A	15 hours	\$7.50/hour
Company B	15 hours	\$8.50/hour
Company C	15 hours	\$9.00/hour

What overtime rate should John be paid?

### Case Study 2

Jennifer is a staffing manager with FedCo Staffing. Many of her clients call with same-day orders. Because this happens often, Jennifer tells her temporary employees during their interview that on days that they are not assigned, they have the option of coming to the office. She can't guarantee there will be any work. However, if a client calls, people in the office will be sent out first.

1. Is Jennifer required to pay the temporary employee for the time spent in the office waiting for an opportunity?
2. Is the obligation under the law different if Jennifer required the employee to come into the office as an official "on-call" person?



## Module 2: Discussion Questions and Scenarios

### Discussion Questions

1. If a temporary employee works 50 hours in a workweek for one client, who is liable for overtime: the staffing company, the client, or both?
2. The Fair Labor Standards Act requires that overtime is paid for nonexempt employees after how many hours are worked in a workweek?
3. Can a nonexempt employee waive his or her right to receive overtime?
4. Should completed Form I-9s be stored with the personnel file or in a separate location?

### Scenarios

Answer the questions below.

1. FedCo Staffing is a large staffing firm employing thousands of people across the U.S. ABC Co. is FedCo Staffing's client. If a FedCo Staffing office is not physically located near an ABC Co. location, how can FedCo Staffing verify documentation of eligibility to work in the U.S. when placing temporary employees at that ABC Co. location?
2. A staffing firm has placed a temporary employee in the marketing department of ABC Co. The marketing manager is traveling for a three-week period. Is it lawful for the staffing firm to refuse to pay the temporary employee until the client returns and signs the time sheet?
3. Julie has been an exceptional temporary employee for FedCo Staffing Services. As a reward, FedCo has offered to give Julie three days of "per diem" pay so she can take her family out for dinner. Is this a lawful way to reward employees?





## Module 2: Knowledge Check

Answer each of the following questions as true or false.

1. \_\_\_\_\_ If a client knows a temporary employee placed by a staffing firm is unlawfully employed and not eligible to work in the U.S., the client can also be held liable.
2. \_\_\_\_\_ It is a best practice to encourage clients to review Form I-9 information for temporary employees placed at their company by a staffing firm.
3. \_\_\_\_\_ Both staffing firms and their clients are liable for ensuring employment eligibility to work in the U.S.
4. \_\_\_\_\_ The Department of Labor may lawfully conduct a wage and hour audit.
5. \_\_\_\_\_ Nondiscretionary bonuses must be included when calculating an overtime rate.
6. \_\_\_\_\_ Commissions should generally be included when calculating an overtime rate.
7. \_\_\_\_\_ Staffing firms and their clients are usually considered joint employers under the FLSA.
8. \_\_\_\_\_ A temporary employee may lawfully volunteer to waive his or her right to overtime.
9. \_\_\_\_\_ “Per diem” should be thought of as “per day.”
10. \_\_\_\_\_ Per diem is considered wage payment under the FLSA and IRS regulations.
11. \_\_\_\_\_ Per diem may be paid up to two years.
12. \_\_\_\_\_ Employers are required to include per diem when calculating an overtime rate.
13. \_\_\_\_\_ Both state and federal laws should be considered when determining how employees should be paid.
14. \_\_\_\_\_ To qualify for the H-1B Temporary Professional Workers Visa, an individual must fulfill an education requirement and be paid a prevailing wage.
15. \_\_\_\_\_ A spouse and unmarried minor children may accompany a foreign employee working on an H-1B Visa to the U.S.

## Module 2—Answer Key

### Case Study—Answers

#### Case Study 1

Company	Hours Worked	Pay Rate	Wages
Company A	15 hours	\$7.50/hour	\$112.50
Company B	15 hours	\$8.50/hour	\$127.50
Company C	15 hours	\$9.00/hour	\$135.00
TOTAL			\$375

$\$375 / 45 \text{ hours} = \$8.33 \text{ average regular rate}$

$\$8.33 \times 1.5 = \$12.50 \text{ overtime rate}$

#### Case Study 2

1. No. The employee is not required to come to the office.
2. Yes. If the employee is scheduled to be “on-call” and required to be in the office, FedCo Staffing generally would be required to pay the employee.

### Discussion Questions & Scenarios—Answers

#### Discussion Questions

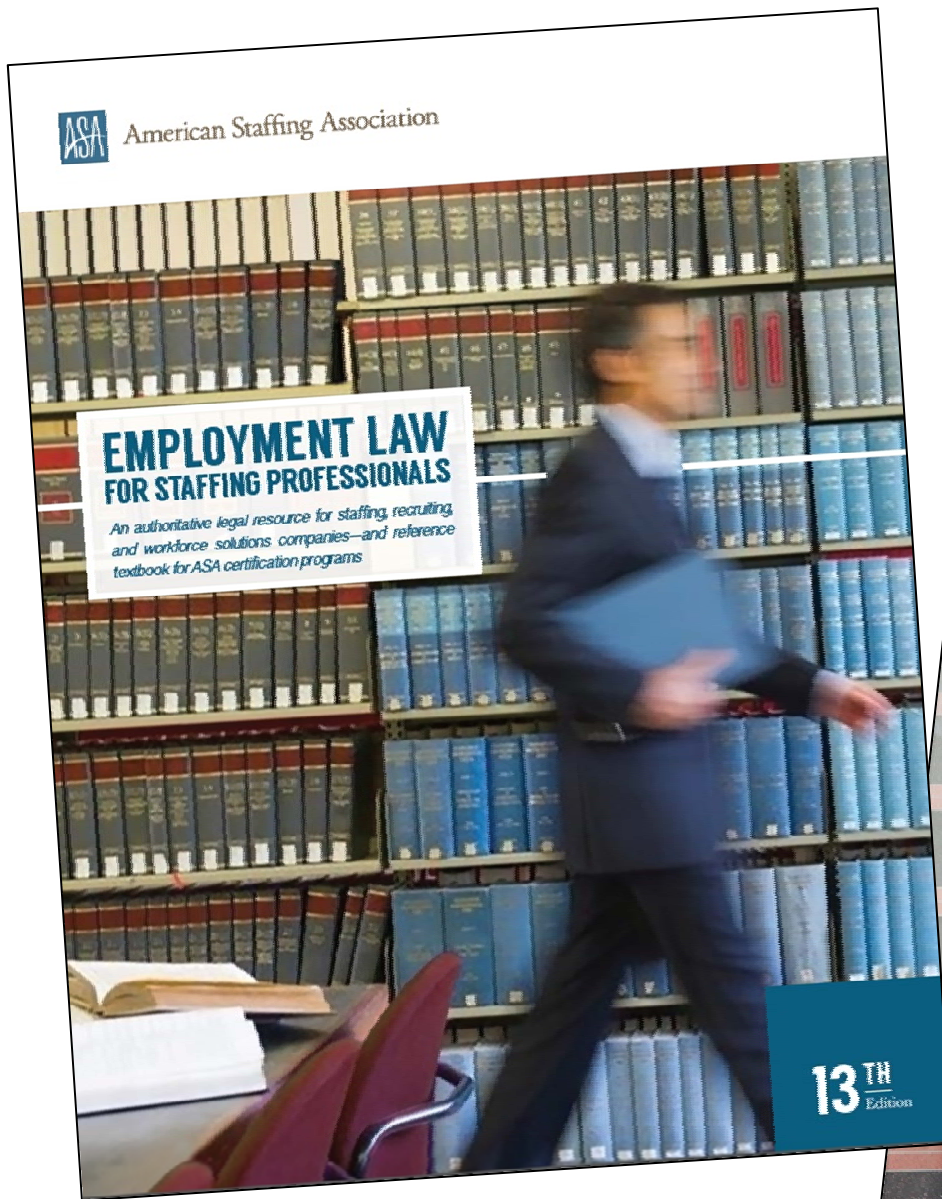
1. If they are joint employers (which is likely), both the staffing company and the client are liable.
2. Forty hours.
3. No. Nonexempt employees cannot waive their right to overtime payment.
4. A completed Form I-9 should be stored separately from the personnel file.

#### Scenarios

1. FedCo Staffing may hire an agent such as a lawyer to complete the Form I-9 and verify identity and eligibility to work in the U.S. FedCo Staffing may not accept a faxed copy of identity and work authorization documents.
2. No. Staffing firms can require timely submission of time sheets as a condition for continued employment. However, in most situations, a client’s failure to sign a time sheet would not be a basis for the staffing firm to lawfully refuse to pay the temporary employee for that week’s work.
3. No. In order to be considered a per diem reimbursement made under an accountable plan, among other things, the cost of the expense must have a “business connection,” meaning the cost must have been incurred in the rendering of service to the employer.

## Knowledge Check—Answers

1. True
2. False
3. False
4. True
5. True
6. True
7. True
8. False
9. True
10. False
11. False
12. False
13. True
14. True
15. True



## Module 3: Drug Testing, Hiring, and Employee Handbooks

**Prereading** Prior to the module, participants should review:



- *Co-Employment: Employer Liability Issues in Third-Party Staffing Arrangements* by Edward A. Lenz, Chapter 2
- *Employment Law for Staffing Professionals* by American Staffing Association, Chapters 4, 6, 7, and 8

Instruct participants to review these chapters prior to attending the meeting.



## Module 3: Kickoff Activity and Recording

Prior to viewing the recording, review each of the following questions and select your answers. Then compare your answers to the correct answers revealed on the recording. An explanation for each answer will be given in the recording.

### Drug Testing

1. Staffing firms that drug test their candidates must do so in accordance with:
  - a. State laws
  - b. The federal 2005 Drug Prevention in the Workplace Act
  - c. The federal 2004 Drug Elimination in the Workplace Act
  - d. None of the above
2. If some of a staffing firm's clients require drug testing, must all applicants of the staffing firm be drug tested?
  - a. Yes
  - b. No

### Hiring

3. Your staffing firm requires applicants to complete medical questionnaires after they have consented to be included in your firm's roster of candidates. Is this lawful?
  - a. Yes, because all of the candidates are treated equally
  - b. Yes, because candidates are asked to complete the questionnaire after they have received an offer of employment
  - a. Yes, because you are not asking candidates whether they are disabled
  - b. No, because the Americans with Disabilities Act (ADA) requires an actual job offer before asking for medical information
4. In the course of a reference check on a candidate for temporary assignments, you learn that the candidate is a member of the Ku Klux Klan who repeatedly showed up at his last workplace in white robes. Can you refuse to hire/assign him?
  - a. Yes, based on the fact that he is a KKK member
  - b. Yes, based on his prior conduct
  - c. No, because that would violate his First Amendment right of free speech
  - d. No, because you generally cannot discriminate based on candidates' political or social views
5. You are filling a temporary assignment for an administrative assistant position. Which of the following generally is appropriate and legal in determining a candidate's suitability for the job?
  - a. Test all applicants on their MS Word skills
  - b. Ask all applicants about their marital status
  - c. Ask all applicants how often and why they were absent from work during the past year
  - d. Ask all applicants if they have ever been arrested

6. You are filling a temporary assignment for an administrative assistant position. Which of the following generally is appropriate and legal in determining a candidate's suitability for the job?
  - a. Ask the applicant the reason for leaving his or her last job
  - b. Ask the applicant about his or her disability
  - c. Ask the applicant if he or she belongs to any political or religious organizations
  - d. Ask the applicant if he or she has childcare issues
  
7. Your client has shared with you that the company does not want any "trouble makers." Is it lawful to make placement decisions on the basis of arrest records?
  - a. Yes
  - b. No

## **Employee Handbooks**

8. One advantage of an employee handbook is that the handbook always constitutes an implied contract between the employee and employer.
  - a. True
  - b. False



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## Module 3: Case Studies

### Case Study 1

FedCo Staffing is a large staffing firm employing thousands of people across the U.S. FedCo Staffing has contracted with ABC Co. to supply temporary employees. ABC Co. also has multiple locations throughout the U.S. ABC Co. requires all temporary employees to pass a drug test, and a background check, and have two positive references. FedCo Staffing is required under its contract with ABC Co. to complete these checks prior to placing a temporary employee.

An applicant who is deaf applies to FedCo Staffing for a month-long temporary position working on a production line. FedCo Staffing places the employee to work at ABC Co. The applicant is able to perform all essential functions of the job, but requests that all work instructions for the position be communicated to him in a written format by using a white board and marker.

1. Is this applicant protected under the Americans With Disabilities Act?
2. Is this request likely to be considered a reasonable accommodation?
3. Would ABC Co. be considered the employer for the purposes of reasonable accommodation under the ADA?

### Case Study 2

Review the following interview script and answer the associated questions.

**Interviewer:** Hello! My name is John Longo. Today I would like to spend some time with you to understand your background and the types of positions you are interested in. I will also tell you a

little about the clients we work with and share with you any positions that we have available that match your background. OK?

**Candidate:** Sounds good to me.

**Interviewer:** I see your last name is Colucci. I am 100% Italian myself. What part of Italy were your relatives from?

**Candidate:** To be honest, I am really not sure.

**Interviewer:** I was just curious. I am planning a big trip to Italy next year. OK, so tell me about your last position.

**Candidate:** I was a secretary for a large company. I supported the sales force. I mostly created letters and proposals for clients.

**Interviewer:** Are you comfortable using MS Word and Excel?

**Candidate:** Yes, very comfortable with MS Word, and I know the basics of Excel.

**Interviewer:** Great! Most of our clients require knowledge of both of these software packages. Why did you leave that position?

**Candidate:** The company closed locally. The headquarters was relocating out of state.

**Interviewer:** That is too bad. We work with many different types of companies. Some are very young and energetic. Others are more established. Tell me about the type of company you would like to work for.

**Candidate:** I am pretty flexible. I have worked with all different types of companies in the past.

**Interviewer:** OK. Being flexible will really open up a number of opportunities for you. I am working on a position right now that I wanted to run past you. The position is an administrative assistant for a senior-level vice president. He is looking for someone who can support him with his schedule, take meeting notes, handle client interactions, etc. The job is fairly demanding in terms of hours. Because the company is international, sometimes meetings start at 3 a.m. Each week the



schedule may change. Do you have any children or other family issues that would limit the schedule you are able to work?

**Candidate:** I do have a child but my personal situation allows me to be flexible in my work schedule.

**Interviewer:** Great. While it is not required, it would be helpful if someone in this job spoke other languages. The reason for this is the international nature of the job. Do you speak any other languages?

**Candidate:** I actually know a few words of Spanish. My father was in the military so I was born in Spain.

**Interviewer:** Oh, good for you. That must have been a great experience. So are you a U.S. citizen?

**Candidate:** Yes, I am still a U.S. citizen.

**Interviewer:** Great. What I would like to do is run your résumé past my client. Are you available later this week if he would like to interview you?

Candidate: Yes—no problem.

**Interviewer:** Great. I will call you tomorrow after I talk with him. Thank you for your time today.

1. What questions or comments could be considered discriminatory during this interview conversation?
2. If the intention of a question during an interview is “friendly discussion” rather than evaluation the candidate, can it still be considered unlawful?



## Module 3: Discussion Questions and Scenarios

### Discussion Questions

1. Should a staffing firm inquire about an applicant's U.S. citizenship?
2. Under the law, how long must the original Form I-9 be retained?
3. For the purposes of reducing legal exposure, what is minimally recommended for all employee handbooks?
4. Why should employee handbooks contain a harassment policy and complaint procedure?

### Scenario

1. FedCo Staffing is a large staffing firm employing thousands of people across the U.S. FedCo Staffing has contracted with ABC Co. to supply temporary employees. ABC Co. also has multiple locations throughout the U.S. ABC Co. requires all temporary employees to pass a drug test, undergo a background check, and have two positive references. FedCo Staffing is required under its contract with ABC Co. to complete these checks prior to placing a temporary employee. If ABC Co. requests specific reference information for a temporary employee, what steps must FedCo Staffing take to comply with the Fair Credit Reporting Act?
2. In the sample job advertisement, circle potential violations of employment law.

#### **Looking for a break in your career?**

Our client is a young, energetic company looking for recent college grads just starting their careers.

This is the break you have been looking for.

Open positions include customer service representatives, stockbrokers, salesmen, and more.

Interested candidates should e-mail résumés to [jobs@fedcostaffing.com](mailto:jobs@fedcostaffing.com).

### 3. Job Application

In the sample job application, circle potential violations of employment law.

#### Job Application

Name: \_\_\_\_\_

Address and phone: \_\_\_\_\_

Maiden name: \_\_\_\_\_

Position desired: \_\_\_\_\_

Days and shifts available: \_\_\_\_\_

#### Employment History

Company name: \_\_\_\_\_

Company address: \_\_\_\_\_

Positions worked: \_\_\_\_\_

Dates: \_\_\_\_\_

Reason for leaving: \_\_\_\_\_

Manager's name: \_\_\_\_\_

#### Education

High school name and dates attended: \_\_\_\_\_

College name and dates attended: \_\_\_\_\_

Are you a U.S. citizen? \_\_\_\_\_

Do you have a car? \_\_\_\_\_

Have you been convicted of a felony? \_\_\_\_\_

*Note: The company will not deny employment solely on the basis of a felony conviction.*

I acknowledge that any false or misleading information on this application will be grounds to deny my application or be grounds for dismissal from employment.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



## Module 3: Knowledge Check

Answer each of the following questions as true or false.

1. \_\_\_\_\_ Drug testing is generally covered under state law.
2. \_\_\_\_\_ When possible, a job advertisement should include an equal opportunity statement.
3. \_\_\_\_\_ Job advertisements should always include both essential and nonessential job functions.
4. \_\_\_\_\_ Job advertisements should include a description of the type of person you are looking to hire.
5. \_\_\_\_\_ It is lawful for an employer to have a policy that eliminates candidates with prior felony convictions regardless of what position they are applying for.
6. \_\_\_\_\_ The following question is lawful to ask during a job interview: “Can you perform the essential functions of the job?”
7. \_\_\_\_\_ The following question is lawful to ask during a job interview: “How often were you out sick in your last position?”
8. \_\_\_\_\_ The following question is lawful to ask during a job interview: “Are you available to work on Sundays?”
9. \_\_\_\_\_ An employee or applicant who is currently engaging in the use of illegal drugs and has been diagnosed as being a “drug addict” is protected under the Americans With Disabilities Act.
10. \_\_\_\_\_ Staffing firms that intend to communicate the results of reference checks to their clients are subject to special requirements under the Fair Credit Reporting Act.
11. \_\_\_\_\_ Generally, employers may make employment-related decision based on an applicant’s arrest records.
12. \_\_\_\_\_ If an applicant is not hired for an assignment due to bad credit history, the applicant must be notified either verbally or in writing.
13. \_\_\_\_\_ Staffing firms should have a clearly adopted and disseminated employment-at-will policy.
14. \_\_\_\_\_ It is recommended that all employee handbooks contain a statement that says the handbook is a legally binding contract between the employee and employer.
15. \_\_\_\_\_ When an employer has an employee handbook, it is recommended for the employer to have all employees sign an acknowledgment stating that he or she has received a copy of the handbook.

# Module 3—Answer Key

## Case Study—Answers

### Case Study 1

1. Yes. The applicant would be protected under the Americans With Disabilities Act.
2. Yes. Control of the work site, cost, and timing are all considered when determining if an accommodation request is considered reasonable. In this case, given the duration of the assignment and the relatively low cost, the accommodation would likely be considered reasonable and therefore required under the law.
3. Yes. Because ABC Co. controls the work environment, ABC Co. would likely be considered the employer.

### Case Study 2

1. The following questions or comments could be construed as discriminatory:  
“I see your last name is Colucci. What part of Italy were your relatives from?”  
“Some companies are young and energetic.”  
“Do you have children or other family issues that would limit the schedule you are able to work?”  
“So are you a U.S. citizen?”
2. Yes. During the interview process it is important to limit all questions to job qualifications. If a candidate chooses to discuss personal information (e.g., having children, being married, being a certain religion), it is best to change the subject and not ask further probing questions.

## Discussion Questions and Scenario—Answers

### Discussion Questions

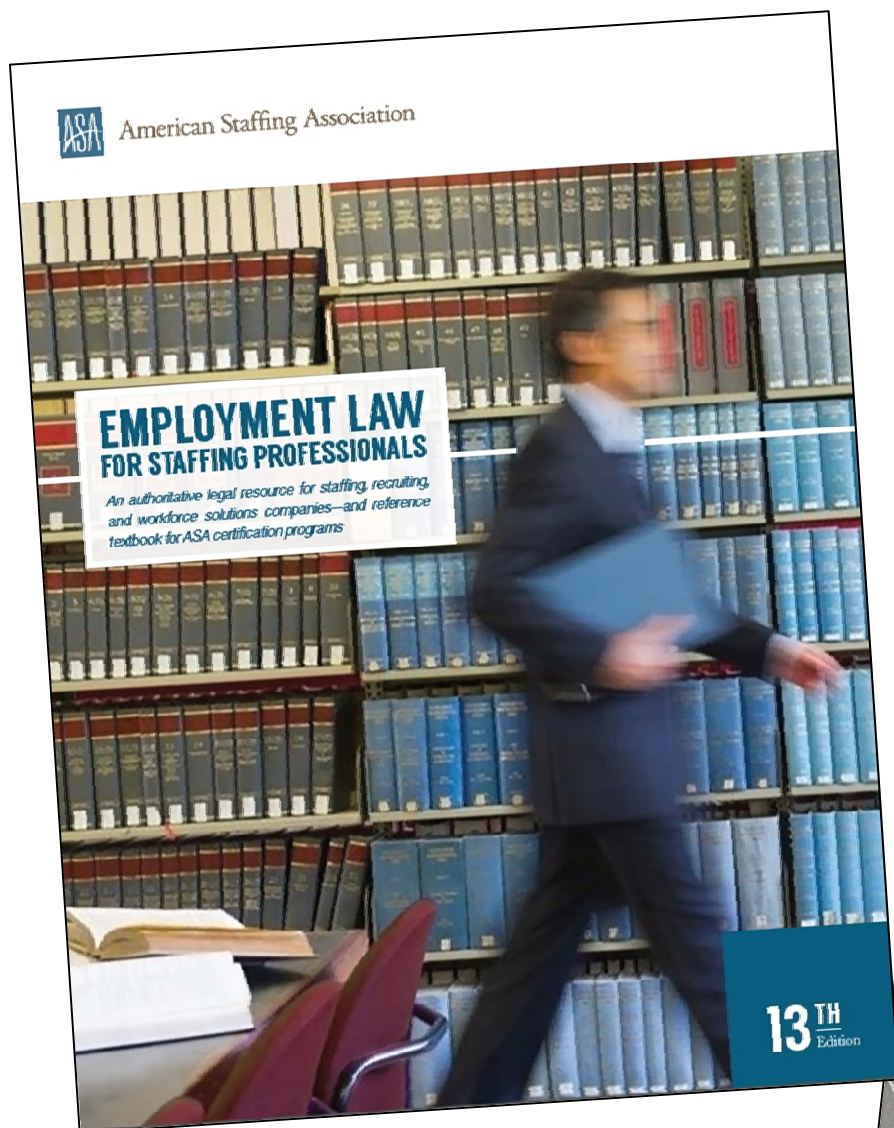
1. No. The IRCA prohibits employment discrimination on the basis of citizenship.
2. The original Form I-9 must be maintained for three years after the employee is hired or one year after the termination of employment, whichever date is later.
3. To minimize legal exposure it is recommended that employee handbooks contain a contract disclaimer, employee acknowledgment, and workplace harassment policy and complaint procedure.
4. Although not a legal requirement, an employer’s policy and procedure for dealing with sexual harassment is a significant factor in determining the extent of an employer’s liability for the harassment of one of its employees.

## Scenarios—Answers

1. The staffing firm must gain oral consent from the applicant before disclosing the information. The authorization should be confirmed in writing within three business days. The staffing firm must inform the employee of his or her right to request information regarding the nature and substance of the reference. When requested by the employee, the staffing firm must disclose the nature and substance of the reference within five days.
2. The following should be highlighted:  
young,  
recent college grads  
salesmen  
Note: This advertisement is also missing the Equal Opportunity Employer statement
3. The following should be highlighted:  
Maiden name:  
High school name and dates attended:  
College name and dates attended:  
Are you a U.S. citizen?  
Do you have a car?

## Knowledge Check—Answers

1. True
2. True
3. False
4. False
5. False
6. True
7. False
8. True
9. False
10. True
11. False
12. True
13. True
14. False
15. True



## Module 4: Workplace Safety, Family Medical Leave Act, and Worker Classification

### Prereading

Prior to the module, participants should review:



- *Co-Employment: Employer Liability Issues in Third-Party Staffing Arrangements* by Edward A. Lenz, Chapter 1, 2 and 3
- *Employment Law for Staffing Professionals* by American Staffing Association, Chapters 3, 9, 10, and 11

Instruct participants to review these chapters prior to attending the meeting.



## Module 4: Kickoff Activity and Recording

Prior to viewing the recording, review each of the following questions and select your answers. Then compare your answers to the correct answers revealed on the recording. An explanation for each answer will be given in the recording.

### Workplace Safety

1. Your customer asks you to record assigned temporary workers' injuries and illnesses on your OSHA 300 log. Should you do so?
  - a. Yes, because it is perfectly legal and good customer service
  - b. Yes, because as the primary employer, the staffing firm has this responsibility
  - c. No, because recording such injuries on your log, rather than the customer's log, may violate OSHA rules and expose both the staffing firm and the customer to substantial penalties
  - d. What's an OSHA 300 log?
2. A client has asked you to assign temporary workers to a work site where a union is striking. Is it lawful to do so?
  - a. Yes, but you should determine whether doing so would pose any risk to the temporary workers
  - b. Yes, but refrain from informing the candidates about the strike
  - c. No, assigning workers in strike situations would violate the federal Strikebreakers Act
  - d. Yes, because refusing to place them would violate the National Labor Relations Act
3. If a temporary employee is exposed to a safety hazard at the client's work site, which of the following factors will OSHA consider in assessing if the staffing firm will be fined?
  - a. Who directs and controls the temporary employee's work at the work site
  - b. Whether the parties allocated among themselves responsibility for complying with the OSH Act in a staffing services agreement
  - c. Who has the authority to control the physical conditions at the work site
  - d. All of the above

### Family and Medical Leave Act

4. You are the HR director of your staffing firm. Your staffing specialist requests leave under the Family and Medical Leave Act. You tell her that, much as you would like to help her, your firm is not covered by the FMLA because it has only 20 in-house employees. Will you still have a job when your boss finds out what you have done?
  - a. Yes, because you have complied with the law
  - b. Uh oh, better get your résumé ready because you may have violated both state and federal law
  - c. No, because all companies are covered by the FMLA
  - d. The less the boss knows, the better
5. To determine whether your firm employs 50 or more employees within a 75-mile radius for FMLA purposes, you generally measure from:
  - a. The customer office to which the temporary employee is assigned
  - b. The staffing office from which the temporary worker is assigned
  - c. The staffing firm's main corporate office
  - d. This is a trick question—there is no 75-mile radius rule for staffing firms



6. Your temporary worker leaves an assignment to go on FMLA leave. Upon return, your client tells you that it likes the replacement worker better. You should:
  - a. Place the returning worker at the head of the line for new assignments
  - b. Tell the worker that his old assignment is no longer available and that he will have to wait his turn for a new assignment
  - c. This is a trick question; temporary employees cannot be eligible for FMLA leave
  - d. None of the above

## **Worker Classification**

7. How do you determine if an employee is really an employee or an independent contractor?
  - a. It depends on a confusing, ambiguous multifactor test that differs in workers' compensation, tax, and other contexts
  - b. It is the employer's option to choose either status, depending on which is more advantageous from a tax perspective
  - c. It is the employee's option to choose
  - d. Under the newly passed Contractor Classification Law, a person can be an independent contractor only if he or she is separately incorporated, and works in a recognized "profession" as defined under the law



Watch recording



## Module 4: Case Studies

### Case Study 1

ABC Co. is one of FedCo Staffing's largest clients. In fact, in several East Coast cities, FedCo Staffing is onsite at ABC Co. placing hundreds of employees. One of ABC's most recent business focuses is improving safety.

1. What type of safety training is ABC Company required to provide to temporary employees placed by FedCo Staffing?
2. What type of safety training should FedCo Staffing provide its temporary employees?
3. ABC Co. has inquired about the possibility of FedCo Staffing keeping a separate injury log under FedCo's name in locations where FedCo Staffing is onsite. Is this lawful under OSHA regulations?
4. Under workers' compensation laws, in most states is ABC Co. protected from negligence liability if a temporary employee placed by FedCo Staffing is injured?

### Case Study 2

Joanne has 20 years of technical recruiting experience. She considers herself highly networked among IT professionals. Joanne prefers to work as an independent contractor rather than an employee. Therefore, Joanne markets her skills to local high-tech companies. When high-tech companies are growing rapidly, they often will bring Joanne on board for a time period of six to 12 months. During that time, Joanne works full-time (40 or more hours per week) according to a set schedule, onsite at the company, and usually reports to the human resources director. Joanne charges \$65 per hour.

1. Based on this information, under most regulations would Joanne likely be considered an independent contractor or employee? Why?
2. What are the risks of misclassification?



## Module 4: Discussion Questions and Scenarios

### Discussion Questions

1. How many employees does a company need to be covered by the Family Medical Leave Act?
2. Are the staffing firm and its client typically considered joint employers under FMLA?
3. If a temporary employee qualifies for FMLA, does a client have an obligation to return the employee to work if the employee was replaced by another temporary employee?
4. What are the three main categories of the 20-factor test that the IRS uses to determine whether an individual may be classified as an independent contractor or employee?

### Scenarios

Answer the questions below.

1. When touring a client site, you notice many safety threats. What is the most appropriate and lawful way to handle the situation?
2. Review the case studies below. For each one, identify whether the employee would likely be classified as exempt or nonexempt and explain why.
  - A. Jennifer builds and fixes computers under the close direction of her manager. She does not have any direct reports. Jennifer's compensation level is \$60,000 per year.
  - B. Julie works as an inside sales professional. Each day her manager gives her a list of companies to call. Julie is responsible for setting appointments for the outside sales professionals. Julie's compensation level is \$30,000 per year.
  - C. Eddie is a senior-level software designer who earns \$65 per hour. Although Eddie only works 30 hours per week, he has a lot of autonomy in his position. His manager knows very little about software design. She gives Eddie full discretion to make decisions as necessary.
  - D. Don is a machine operator. He is responsible for managing the output of a machine that assembles packages. While Don does not have any official direct reports, on a daily basis he is responsible for directing the utility workers on the machine. Don spends approximately 85% of his time working on the machine and 15% of his time directing other employees. Don earns compensation of \$25,000 per year.
  - E. José is a lawyer. He has been placed on an assignment for a law firm that is in the middle of a big case. While José is working many hours, the majority of his work time has been spent doing

administrative tasks for the case, such as copying and creating files. José earns \$20 per hour.



## Module 4: Knowledge Check

Answer each of the following questions as true or false.

1. \_\_\_\_\_ Clients have primary responsibility related to workplace safety.
2. \_\_\_\_\_ Under OSHA guidelines, staffing firms are responsible for providing general safety training.
3. \_\_\_\_\_ Under OSHA guidelines, staffing firms generally must keep a log of workplace injuries and illnesses for temporary employees placed on client sites.
4. \_\_\_\_\_ A staffing firm's client is likely to be considered "the general employer" under workers' compensation laws.
5. \_\_\_\_\_ In most states, staffing firms and their clients are protected from negligent lawsuits for workplace injuries.
6. \_\_\_\_\_ The staffing firm is considered the primary employer under FMLA.
7. \_\_\_\_\_ Temporary employees cannot be eligible for Family and Medical Leave Act.
8. \_\_\_\_\_ To determine if an employee is exempt, both salary and the nature of the job duties are considered.
9. \_\_\_\_\_ In most situations, hourly employees are considered exempt.
10. \_\_\_\_\_ Provided the minimum salary requirement is met, the greater discretion a recruiter has, the more likely he or she will be classified as exempt.
11. \_\_\_\_\_ Job title is important when determining if someone is exempt.
12. \_\_\_\_\_ If a temporary employee complains about hazards on the job site, the staffing company has an obligation to investigate.
13. \_\_\_\_\_ Workplace injuries for temporary employees should generally be logged under the staffing firm rather than the client company.
14. \_\_\_\_\_ The staffing firm is responsible for general safety training.
15. \_\_\_\_\_ Staffing firms may reduce the likelihood of being cited for OSH Act violations by including a provision in their staffing services agreements explicitly establishing that the client controls the work environment and is responsible for compliance.

# Module 4—Answer Key

## Case Study—Answers

### Case Study 1

1. Job- and site-specific safety training.
2. General safety training.
3. Not if ABC Co. supervises and directs the temporary employee's work. FedCo Staffing may record injuries in the log, but it must be kept under ABC Co.'s name.
4. Yes. In most states, ABC Co. is protected from negligence liability for workplace injuries under workers' compensation laws.

### Case Study 2

1. Employee. Joanne is working onsite at the company, under a set schedule, and under the supervision of a manager. She also is using the company equipment rather than her own.
2. Most workers assigned through a staffing arrangement perform their work under the supervision and control of either the staffing firm or the client, and the work performed generally is of a nature that does not require the worker to exercise a substantial degree of independent judgment. While exceptions do exist—especially in the information technology field—most assigned workers can properly be classified only as employees under applicable law.

If an assigned worker is an employee and the firm that assigns the worker nevertheless classifies him or her as an independent contractor, the firm can face significant fines and penalties for, among other things, failure to withhold taxes, pay Social Security, provide insurance coverage, and pay overtime.

## Discussion Questions and Scenarios—Answers

### Discussion Questions

1. Fifty employees for each working day during a 20-week period.
2. Yes. A staffing firm and its clients are typically considered joint employers under FMLA.
3. Yes. Even if the position is filled with a substitute, the client and the staffing firm are required to return the employee to his or her previous position.
4. To determine independent contractor versus employee status, the IRS divides the 20-factor test into three main categories: behavioral control factors, financial control factors, and relationship factors.

## Scenarios

1. Address the safety risks with the client and ensure they are eliminated before placing a temporary employee.
2. Scenarios—Exempt and Nonexempt
  - A. Nonexempt. Jennifer is engaged in the manufacture and repair of computer hardware. The computer professional exemption is not available for employees engaged primarily in this type of work. Jennifer also works under the close supervision of her manager, exercising little individual judgment.
  - B. Nonexempt. Julie works as an inside sales professional. Outside sales is the requirement for the sales exemption. Julie also works under the close supervision of her manager, exercising little individual judgment.
  - C. Exempt. Eddie is a senior-level software designer earning over the minimum rate for the computer professional exemption.
  - D. Nonexempt. The majority of Don's time is spent performing manual labor.
  - E. Nonexempt. The duties José is performing are clerical rather than those of a lawyer.

## Knowledge Check—Answers

1. True
2. True
3. False
4. False
5. True
6. True
7. False
8. True
9. False
10. True
11. False
12. True
13. False
14. True
15. True