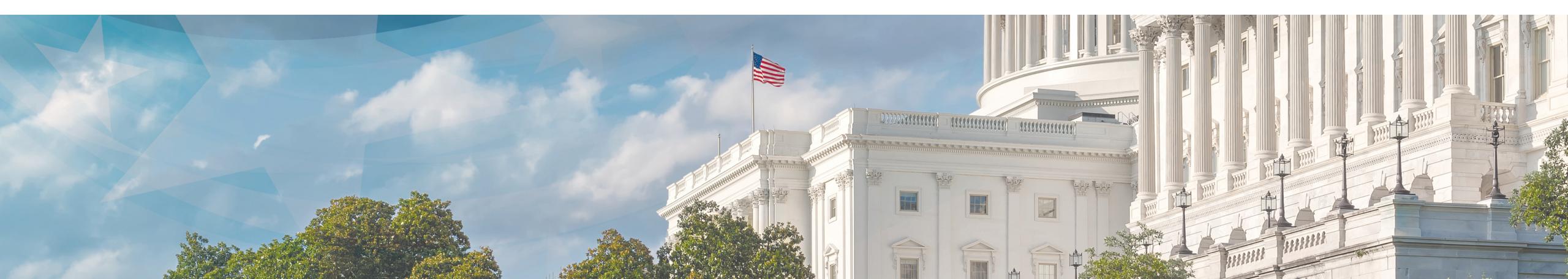


STAFFING LAW CONFERENCE



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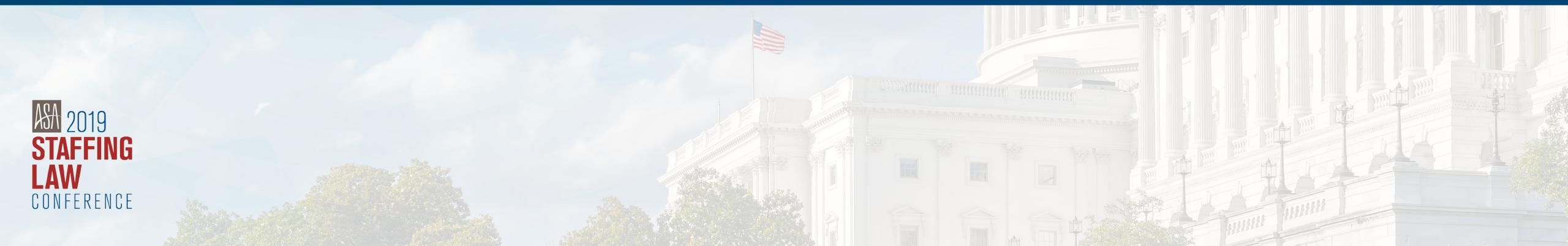
THE GREAT STAFFING CONTRACT NEGOTIATION





The Great Staffing Contract Negotiation

Joel A. Klarreich, Esq., partner, Tannenbaum Helpern Syracuse & Hirschtritt LLP George M. Reardon, Esq., attorney and counselor at law



Indemnity Generally

<u>Client:</u> Staffing Firm shall indemnify, defend, and hold harmless Client for all Claims that arise from or relate in any way to Staffing Firm's or its employees': 1) breach of this Agreement; 2) negligent or unlawful acts; 3) intentional misconduct; 4) substandard work product; 5) claims or charges against Client; 6) status as joint employees of Staffing Firm and Client; 7) infringement of any person's intellectual property rights; 8) misuse or misappropriation of Client's Confidential Information; 9) violations of law; 10) participation in environmental damage; or 11) personal injuries to any person.



Indemnity Generally

Staffing Firm Revision: Staffing Firm shall indemnify, defend, and hold harmless Client for all Claims to the extent that arise from or relate in any way to caused by Staffing Firm's or its employees': 1) breach of this Agreement; 2) negligent or unlawful acts; 3) intentional misconduct; 4) substandard work product; 5) claims or charges against Client; 6) status as joint employees of Staffing Firm and Client; 7) infringement of any person's intellectual property rights; 8) misuse or misappropriation of Client's Confidential Information; 9) violations of law; 10) participation in environmental damage; or 11) personal injuries to any person. Staffing Firm's obligations for Claims brought by, on behalf of, or caused by the acts or omissions of Assigned Employees shall be limited to the extent to which they are caused by Staffing Firm's failure to fully and properly fulfill the obligations of a staffing firm under the law and this Agreement.



Retrobenefits

<u>Client:</u> Staffing Firm shall be solely responsible for the payment of all wages, benefits, social insurance contributions, and taxes required by law with respect to its Assigned Employees, including any benefits to which Assigned Employees become entitled as the result of any finding that they are employees or co-employees of Client, and Staffing Firm shall defend, indemnify, and hold client harmless for the cost of paying or defending such claims.



Retrobenefits

<u>Staffing Firm Revision:</u> Staffing Firm shall be solely responsible for the payment of all wages, <u>Staffing Firm-sponsored</u> benefits, social insurance contributions, and taxes required by law with respect to its Assigned Employees <u>as its employees</u>, including any <u>such</u> benefits to which Assigned Employees become entitled as the result of any finding that they are employees or co-employees of Client, and Staffing Firm shall defend, indemnify, and hold client harmless for the cost of paying or defending such claims. <u>Staffing Firm will require Assigned Employees to execute waivers of eligibility and participation in Client's benefit plans.</u>



Confidentiality Breaches

<u>Client:</u> Staffing Firm shall hold all of Client's Confidential Information in strict confidence and shall not use, disclose, misappropriate, retain, or publish such Confidential Information. Staffing Firm shall remediate and indemnify Client for all breaches of the confidentiality required by this section.



Confidentiality Breaches

<u>Staffing Firm Revision:</u> Staffing Firm shall hold all of Client's Confidential Information in strict confidence and shall not use, disclose, misappropriate, retain, or publish such Confidential Information. Staffing Firm shall remediate and indemnify Client for all breaches of the confidentiality required by this section. <u>Confidential Information that is disclosed or made available to Staffing Firm's Assigned Employees shall not thereby be deemed to have been disclosed or made available to Staffing Firm.</u>



Stale Invoice Forfeitures

<u>Client:</u> Staffing Firm invoices that are not correct, complete, and submitted to Client within 60 days after the work of the Assigned Employees is performed shall not be payable by Client.



Stale Invoice Forfeitures

<u>Staffing Firm Revision:</u> Staffing Firm invoices that, <u>because of the fault of Staffing Firm</u>, are not correct, complete, and submitted to Client within <u>60120</u> days after the work of the Assigned Employees is performed shall <u>not</u> be payable by Client <u>at only 80% of their original amount.</u>



Affordable Care Act

<u>Client:</u> Staffing Firm will offer to all Assigned Employees that it assigns to Client affordable, minimum value health insurance coverage, as defined by the Affordable Care Act. Staffing Firm will indemnify Client for all Internal Revenue Code §4980H assessable payments that Client must pay because of Client's use of such employees.



Affordable Care Act

<u>Staffing Firm Revision:</u> Staffing Firm will offer to all <u>full-time</u> Assigned Employees that it assigns to Client affordable, minimum <u>value health insurance essential</u> coverage (as <u>the terms full time</u>, affordable, and <u>minimum essential coverage are</u> defined by the Affordable Care Act). Staffing Firm will indemnify Client for all Internal Revenue Code §4980H assessable payments that Client must pay <u>because of Client's use of such employees</u> that are attributable to Assigned Employees. <u>Staffing Firm will charge Client more for Assigned Employees enrolled in Staffing Firm's health coverage than it charges for similarly categorized Assigned Employees who are not enrolled, revealing only the number, and not the identities, of the enrolled Assigned Employees.</u>



Payrolled Employees

<u>Client:</u> Assigned Employees recruited or identified by Client and referred to Staffing Firm for employment and assignment back to Client are "Payrolled Employees." The markup for Payrolled Employees shall be 5% less than the markup for a Staffing Firm-sourced Assigned Employee in the same skill category. Staffing Firm shall exclude Payrolled Employees from its nonmandated employee benefit plans, and the claims, acts, and omissions of Payrolled Employees shall not give rise to indemnity obligations of Staffing Firm.



Payrolled Employees

Staffing Firm Revision: Assigned Employees recruited or identified by Client and referred to Staffing Firm for employment and assignment back to Client are "Payrolled Employees." The markup for Payrolled Employees shall be 5% less than the markup for a Staffing Firm-sourced Assigned Employee in the same skill category. Staffing Firm shall exclude Payrolled Employees from its nonmandated employee benefit plans, and tThe claims, acts, and omissions of Payrolled Employees attributable to the selection of those employees shall not give rise to indemnity obligations of Staffing Firm. Staffing Firm shall record the number of Payrolled Employees and shall share that information with Client when rates are renegotiated.



Definition of 'Services'

<u>Client</u>: "Client hereby engages Staffing Firm to provide temporary technology and IT services as set forth in the Statement of Work. Each Statement of Work shall contain the names of Assigned Employees; job classification; the hourly, daily, or other rate of payment applicable to each Assigned Employee; and the description of services the Staffing Firm will be providing."



Definition of 'Services'

<u>Staffing Firm Revision</u>: "Client hereby engages Staffing Firm to provide temporary <u>employees who will perform</u> technology and IT services <u>under the Client's direction</u> as set forth in <u>the Statement of Work</u>. Each Statement of Work shall contain the <u>names of Assigned Employees'</u>; job classification; <u>and the hourly</u>, <u>daily</u>, <u>or other and overtime</u> rate(s) of payment applicable to each Assigned Employee <u>and the description of services the Staffing Firm will be providing</u>."



Performance Criteria

<u>Client</u>: "Staffing Firm shall monitor work performance and adhere to schedules established by the Client, the highest standards of workmanship, and a duty to reperform poor work or services. Staffing Firm represents and warrants to Client that the services shall be performed in accordance with the highest standards."



Performance Criteria

Staffing Firm Revision: "Staffing Firm shall monitor work performance and adhere to schedules established by the Client, the highest standards of workmanship, and a duty to re-perform poor work or services provide Client with qualified and available employees ready to perform the services requested by Client. Staffing Firm shall not supervise the performance or review the work product of such Assigned Employees, but shall remain responsible for the human resource management of such employees. Staffing Firm represents and warrants to Client that the its services shall be performed in accordance with the highest standards a professional and workmanlike manner."



FLSA Exemption of Assigned Employees

<u>Client</u>: "Client shall not be responsible to pay, and Staffing Firm shall not charge Client for, any overtime premium compensation due to an Assigned Employee.



FLSA Exemption of Assigned Employees

Staffing Firm Revision: Assigned Employees are presumed to be nonexempt from laws requiring overtime compensation for hours worked in excess of forty (40) in any given workweek. Accordingly, Staffing Firm shall charge Client, and Client shall pay, special rates for overtime work when the Assigned Employee's work on assignment for or on behalf of Client would legally require the payment of overtime compensation. [Client's special billing rate for overtime hours will be the same multiple of the regular billing rate as Staffing Firm is required to apply to the Assigned Employee's regular pay rate.]



Scope of Conversion Fees

Client:

- A. Temporary-to-Permanent Conversion: If an Assigned Employee is hired directly by Client within one (1) year after such Assigned Employee's assignment to Client, Client shall pay Staffing Firm a fee of ____% of the employee's first year base compensation, discounted as specified below. If a converted employee's employment ends within its first ____ days, the conversion fee shall be refunded.
- B. Transition: At Client's request, on termination of the Agreement, Staffing Firm will cooperate as reasonably requested to effect a smooth transition of the Services to another supplier to minimize any disruption to Client's operations as a result of the termination.



Scope of Conversion Fees

Client:

LAW

CONFERENCE

- A. Temporary-to-Permanent Conversion: If an Assigned Employee is hired directly by Client or engaged by Client as a direct employee, independent contractor, or through any person or firm other than Staffing Firm, within one (1) year after such Assigned Employee's assignment to Client, Client shall pay Staffing Firm a fee of ____% of the employee's first year base compensation in the new position, discounted as specified below. If a converted employee's employment ends within its first ____ days, the conversion fee shall be refunded. Client shall pay Staffing Firm with the fee within 30 days of the start of the new employment or engagement.
- B. Transition: <u>Subject to paragraph A above</u>, <u>Aat Client's request</u>, on termination of the Agreement, Staffing Firm will cooperate as reasonably requested to effect a smooth transition of the Services to another supplier to minimize any disruption to Client's operations as a result of the termination.

Criminal Background Checks

<u>Client:</u> Staffing Firm will perform criminal background checks on all individuals prior to assigning them to Client. Staffing Firm shall not assign any individual with a misdemeanor or felony conviction to Client.



Criminal Background Checks

<u>Staffing Firm Revision</u>: Staffing Firm will perform criminal background checks <u>at the Client's expense</u> on all individuals prior to assigning them to Client. Staffing Firm shall <u>screen all individuals in accordance with the applicable law prior to any assignment and <u>shall exclude not assign any individuals</u> with a misdemeanor or felony conviction <u>from assignment to Client to the maximum extent permitted by law.</u> to Client.</u>



Quality of Work Product Guarantee; Redo Obligation

<u>Client</u>: "Staffing Firm guarantees that all work of Assigned Employees will be performed to Client's satisfaction and Staffing Firm must refund to Client all billings for Assigned Employees whose performance is unsatisfactory as determined by Client in its sole discretion."



Quality of Work Product Guarantee; Redo Obligation

Staffing Firm Revision: "Staffing Firm will use reasonable commercial efforts to supply qualified temporary employees to Client. Staffing Firm ensures Client's satisfaction with each Assigned Employee for one (1) full working day. Specifically, to the extent Client is dissatisfied with the performance of any Assigned Employee and brings such dissatisfaction to the attention of the Staffing Firm within 24 hours of such Assigned Employee's first hour worked on assignment to Client, there shall be no charge to Assigned Employee's first eight (8) hours worked on the assignment, and the Staffing Firm will use reasonable efforts to promptly replace such Assigned Employee.





Joel A. Klarreich is a partner in the New York City law firm of Tannenbaum Helpern Syracuse & Hirschtritt LLP, where he is chairman of the staffing industry and corporate departments. He specializes in business, corporate, and employment law. Klarreich has more than 35 years of experience representing individual, multioffice, and franchise staffing organizations with regard to corporate, merger and acquisition, administrative law, lending litigation, unfair competition, labor and employment, and diverse corporate matters. He has represented numerous buyers and sellers of staffing firms in mergers and acquisitions of all magnitudes and represented staffing firms in public and private stock offerings.

Joel A. Klarreich | 212-508-6747 | jak@thsh.com



George M. Reardon is an attorney based in Houston who focuses his practice on serving the staffing industry. During a period of 27 years, he served as in-house/general counsel for four national and international staffing firms—Snelling, Talent Tree, Kelly Services, and the North American segment of Adecco. He served for 12 years on the American Staffing Association's board of directors, executive committee, and legal and legislative committee. He is a frequent author and speaker on matters of concern to staffing firms. Reardon holds a B.S. in business from Indiana University's Kelley School of Business and a J.D. with honors from the University of Florida. His website is *reardonstafflaw.com*.

George M. Reardon | 281-888-6641 | georgemreardon@aol.com



QUESTIONS?





THANK YOU

