

You Be the Judge: Top Staffing Cases of 2021

#staffinglaw

You Be the Judge: Top Staffing Cases of 2021

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How This Will Work

- The Attorneys will present their case for either the Plaintiff or the Defendant
- The Judge and/or Jury (i.e., you) will ask questions to clarify the facts
- The Jury will vote for either the Plaintiff's or Defendant's case
- The Judge will pronounce the verdict
- The Attorneys will explain the verdict on the basis of the legal theory applied in the real case
- Questions



Case No. 1



Conversion Fees and Unlawful Restraint of Trade

Employment Services Inc. v. Financial Solutions LLC

■ **The Players**

- Employment Services Inc. (ESI): Staffing company
- Financial Solutions LLC: Financial company that received staffing services from ESI
- Poaching Company: Second staffing company providing staffing services to Financial Solutions

Employment Services Inc. v. Financial Solutions LLC

■ **The Key Facts**

- ESI placed 30 temporary employees at Financial Solutions.
- Financial Solutions signed ESI's "Conditions of Service," which included a conversion fee provision requiring Financial Solutions to pay a set fee if it hired any of ESI's temporary employees or caused another staffing agency to hire them.
- Financial Solutions signed an agreement with Poaching Co. At Financial Solutions' direction, all of ESI's 30 temporary employees transferred to Poaching Co. and continued to work for Financial Solutions.

Employment Services Inc. v. Financial Solutions LLC

■ **The Case**

- ESI sued Financial Solutions for breach of contract to recover the conversion fee for the 30 temporary employees transferred to Poaching Co.
- The district court granted summary judgment to ESI. Financial Solutions appealed.

Employment Services Inc. v. Financial Solutions LLC

■ **The Issue**

- Is the conversion fee provision unenforceable as an unlawful restraint of trade?

■ **The Law**

- Agreements between businesses to restrain business operations are unenforceable if unreasonable.
 - Consider the appropriateness of the restraint to advancing the interests to be protected; the availability of less harmful alternatives; the nature of the interest interfered with; intent or potential to create a monopoly; and the social or economic justification for any resulting monopoly.



You Decide

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Employment Services Inc. v. Financial Solutions LLC

A - Employment
Services Inc.

B - Financial
Solutions LLC

Employment Services Inc. v. Financial Solutions LLC

■ **The Decision**

- The conversion fee provision is enforceable as a reasonable restraint on trade between businesses.

■ **The Reasons**

- The conversion fee was limited to employees that ESI placed with Financial Services and was reasonable in scope.
- Conversion fees protect staffing companies, whose business is supplying labor to clients, from unfair exploitation of their training and recruitment services.



Case No. 2



Obtaining Consumer Reports Under the Fair Credit Reporting Act

Baker v. Staffing Services Co.

■ **The Players**

- Baker: Applicant for job with Staffing Services Co.
- Staffing Services Co. (SSC): Staffing company
- CoCompany: Company that obtained Baker's consumer report on behalf of SSC

Baker v. Staffing Services Co.

■ **The Key Facts**

- While applying for a job with SSC, Baker authorized SSC and its agents to obtain her consumer report.
- Instead of obtaining Baker's consumer report itself, SSC directed CoCompany to obtain the report.

Baker v. Staffing Services Co.

■ **The Case**

- Baker sued SSC and CoCompany for violating the Fair Credit Reporting Act (FCRA).
- Baker argued that SSC and CoCompany violated the FCRA by failing to disclose that CoCompany was obtaining her consumer report, and CoCompany further violated the FCRA by obtaining her consumer report without her authorization.

Baker v. Staffing Services Co.

■ **The Issue**

- Whether SSC and CoCompany violated the FCRA by failing to disclose that CoCompany would obtain Baker's consumer report on behalf of SSC

■ **The Law**

- The FCRA prohibits anyone from procuring a consumer report or causing a consumer report to be procured unless two requirements are met:
 - A clear and conspicuous disclosure is made to the consumer; and
 - The consumer authorized in writing the procurement of the report by that person



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Baker v. Staffing Services Company

A - Baker

B - Staffing
Services Company

Baker v. Staffing Services Co.

■ **The Decision**

- SSC and CoCompany did not violate the FCRA.

■ **The Reasons**

- CoCompany is an agent of SSC.
- SSC's disclosure to Baker clearly and conspicuously notified Baker that SSC and its agents would obtain her consumer report.
- Baker authorized SSC and its agents to obtain her consumer report.



Case No. 3



Staffing Company Liability for Safety Violations

Department of Labor v. Labor International Inc.

■ **The Players**

- U.S. Department of Labor (DOL): State department
- Labor International Inc. (LII): Staffing company
- Materials Co.: Recycling and waste company receiving staffing services from LII

Department of Labor v. Labor International Inc.

■ **The Key Facts**

- LII contracted to provide staffing services to Material Co. to sort recycling and waste. Under the contract, Material Co. was solely responsible for providing a safe work environment that complied with state and federal safety law.
- During an inspection, DOL discovered that LII temporary workers were being exposed to blood-borne pathogen hazards, that LII failed to keep complete documentation of vaccine history of temporary employees, and that temporary workers sometimes worked months without receiving blood-borne pathogens training.
- After an LII temporary worker was poked by a needle, DOL cited LII for five safety violations of the state safety law, WISHA.

Department of Labor v. Labor International Inc.

■ **The Case**

- LII appealed the safety citations, arguing that it lacked control over the worker and work environment and was not a liable employer under WISHA.
- The Board of Industrial Insurance Appeals agreed that CSI was not a liable employer and vacated the citations.
- DOL appealed to superior court, which reversed the board and reinstated the citations.
- DOL appealed to the Court of Appeals, which reversed the superior court and vacated the citations.
- DOL appealed to the state Supreme Court.

Department of Labor v. Labor International Inc.

■ **The Issue**

- Whether LII is a liable employer for safety violations under WISHA

■ **The Law**

- Economic realities test determines whether an employer is a “liable employer” for purposes of WISHA. Consider
 - Who the workers consider their employer
 - Who pays the workers’ wages
 - Who has the responsibility and/or power to control the workers
 - Whether the alleged employer has the power to fire, hire, or modify the employment conditions of the workers
 - Whether the workers have the ability to increase their income through initiative, judgment, and foresight
 - How the workers’ wages are established



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Department of Labor v. Labor International Inc.

A - Department of
Labor

B - Labor
International Inc.

Department of Labor v. Labor International Inc.

■ **The Decision**

- LII is a liable employer. The WISHA citations were reinstated.

■ **The Reasons**

- LII exercised substantial control over the workers and conditions.
- The citations involved LII's responsibilities, including recordkeeping requirements, initial training, and administrative tasks.



Case No. 4

Compelling Arbitration

Global Staffing Inc. v. Hancock

■ **The Players**

- Global Staffing Inc. (GSI): Staffing company
- Hancock: Temporary worker employed by GSI
- Construction Co.: Company receiving staffing services from GSI

Global Staffing Inc. v. Hancock

■ **The Key Facts**

- Hancock completed GSI's computerized hiring application.
- As part of the computerized hiring application process, the applicant signs a Mutual Arbitration Agreement with a unique digital ID and time stamp.
- GSI placed Hancock at Construction Co. Hancock was quickly fired.

Global Staffing Inc. v. Hancock

■ **The Case**

- Hancock sued GSI and Construction Co. for racial discrimination.
- GSI moved to compel arbitration under the Mutual Arbitration Agreement signed by applicants. Hancock argued that he never signed the Mutual Arbitration Agreement.
- The trial court denied GSI's motion to compel, and the appellate court affirmed.
- GSI appealed to the state Supreme Court.

Global Staffing Inc. v. Hancock

■ **The Issue**

- Did Hancock consent to the Mutual Arbitration Agreement?

■ **The Law**

- To compel arbitration, the parties must have consented to the arbitration agreement.
- To show consent to the arbitration agreement, the electronic signature must be the act of the person alleged to have signed the agreement.



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Global Staffing Inc. v. Hancock

A - Global
Staffing Inc.

B - Hancock

Global Staffing Inc. v. Hancock

■ **The Decision**

- Hancock is required to arbitrate his claims against GSI.

■ **The Reasons**

- GSI conclusively established that Hancock electronically signed, and therefore consented to, the Mutual Arbitration Agreement.
- Hancock could not have completed the computerized hiring application without signing the Mutual Arbitration Agreement.
- The security measures established by GSI in its hiring application were sufficient to prove that Hancock signed the Mutual Arbitration Agreement. The signature had Hancock's unique digital ID and could not be modified by GSI.



Questions?