

FISSURED WORKPLACE: THE STAFFING INDUSTRY

A business model premised on the motto “we break the law so you don’t have to”

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As with any industry, there are good actors and bad actors, but the staffing industry seems to be populated by an inordinate number of bad actors. For many of these bad actors, they seemed to have adopted a motto of “we break the law so you don’t have to”, attempting to create some distance between the end user employer, the ultimate beneficiary of the work, and the employment laws that protect the workers.

Areas of violations litigated:

Straight Wage Theft:

- Staffing agencies often charge a mark-up for the hours worked by the staffing agency workers (e.g. if a worker is paid the Illinois minimum wage of \$8.25, a staffing agency might bill its client company around \$11.00 per hour, or a 135% mark-up, which is supposed to cover workers’ comp insurance, unemployment insurance, payroll costs, overhead and profit).
 - In multiple cases, comparing a staffing agency’s pay records for the hours worked by its laborers with its billing records to the client company for those hours have revealed millions of dollars of shorted pay for work which was billed;
 - In one interesting case, whistleblowers alleged that whenever a staffing agency laborer complained about hours being shorted, the staffing agency would investigate the claim, bill the company for the hours, cut a check but then stick the check in a drawer until the check expired and keep the money;
 - Staffing agencies will often only pay laborers for a fixed 8 hour shift even if the company requires the laborers to work beyond the 8 hour shift.

Unpaid Overtime Wages:

- Staffing agencies will frequently send workers to two different client companies in the same work week for more than 40 hours, but pay the workers with separate checks for each assignment, not paying overtime;
- In some cases, a client company will utilize two staffing agencies to employ the same laborers at its work site for more than 40 hours, having the laborers clock out from one agency and clock into the second agency at 40 hours, thereby avoiding overtime;
- We have seen a few cases where a staffing agency has the same laborers work under two different names to avoid paying overtime;
- Illegal ride charges: see <https://www.propublica.org/article/taken-for-a-ride-temp-agencies-and-raiteros-in-immigrant-chicago>

Discrimination:

- Staffing agencies often serve as a screener for their client companies to allow them to hire (or not hire) the type of worker they want, often illegally discriminating. The practice was well documented in a series of articles by Will Evans of Reveal News.¹ Code words are common for discriminatory requests based on race, gender, age, disability, etc. Some examples:
 - Race: guapos/feos; bilingual workers; basketball players/soccer players/basketball players;
 - Gender: heavies/lights

¹ See, for example, www.chicagoreporter.com/growing-temp-industry-shuts-out-black-workers-exploits-latinos/; www.revealnews.org/article/how-a-temp-agency-can-get-away-with-discrimination/; <https://www.revealnews.org/episodes/decoding-discrimination-in-americas-temp-industry/>; www.al.com/news/2016/01/temp_agency_workers_detail_pre.html.

Coming...

- Uberworks, Shiftgig, etc.

Working Toward Some Solutions:

- Legislative regulation – see Illinois Day and Temporary Labor Services Act, 820 ILCS 175/1, *et seq.*:
 - Employment notice (or written contract terms) – *See* Section 10
 - Record-keeping requirement – *See* Section 12(a) – some key records
 - Bill, pay, time records
 - Race/gender of assignees
 - Requirement for staffing agencies to register with IDOL – *See* Section 45
 - Penalties for companies doing business with unregistered agencies - *See* Section 85(a)
 - Strict liability for wage and hour violations by staffing agencies – *See* Section 85(b)
 - Workers’ access to the bill/pay/time records for their work - *See* Section 12(b)
- Government enforcement and litigation: In Illinois, we have tackled race discrimination cases through cooperation with the AG, IDOL and through private litigation. *See*, for example, some of the race discrimination cases brought in Illinois.²

² *See* www.chicagoreporter.com/whistleblowers-and-lawsuits-expose-racial-discrimination-by-temp-agencies/; *see* also, for example, *Lucas, et al. v. Vee Pak, Inc., et al.*, Case No. 12 C 9672 (N.D. Ill.); *Green, et al. v. Vee Pak, Inc., et al.*, Case No. 13 C 1524 (N.D. Ill.); *Lucas, et al. v. Ferrara Candy Company, et al.*, 13 C 1525 (N.D. Ill.); *Hunt, et al. v. Personnel Staffing Group, LLC d/b/a MVP, et al.*, Case No. 16 C 11086 (N.D. Ill.); *Pruitt, et al. v. Personnel Staffing Group, LLC d/b/a MVP, et al. d/b/a MVP*, Case No. 16 C 05079 (N.D. Ill.); *Pruitt, et al. v. Quality Labor Services, Inc., et al.*, Case No. 16 C 05079 (N.D. Ill.);