

## **Time Cards: The Staffing Industry Contract**

**By Christopher Smith**

While the Staffing Industry has seen countless changes and made numerous adjustments throughout history, there has been one constant factor – the time card.

Almost everyone in the staffing industry has used a time card and has a cursory understanding of its function. Most people know that the time card system allows temporary employees to accurately reflect the actual hours worked at a particular client facility as well as allowing the employer an accurate means of salary allocation. What many people do not know is that the time card can work as a contract between the Temporary Staffing Agency and their client.

Below is an example of such contract / agreement:

**\*\*Please note that the following is just an example and that you should contact your attorney to determine what is legally binding in your state.**

*Any employee or referral for employment of the employee named on this timesheet/timecard shall be through the (Your Name). It is understood that an authorized representative of the client company duly supervised the employee, that the above hours are correct and that the work was performed to your satisfaction, or the client company certifies that (a) the client company will not entrust (Your Name) employee with unattended premises, cash, negotiables, or other valuables or (b) the client company will not authorize such employee to operate machinery or motor vehicles without permission from (Your Name), and each instance, (Your Name) does not cover loss of damages caused by (Your Name) employees operating client company's owned or leased motor vehicle(s), and client company therefore accepts full responsibility for claims, including the defense thereof, involving bodily injury, property damage, fire, theft, collision, cargo damage or public liability damage sustained or incurred as a result of a (Your Name) employee driving such vehicle(s) or arising out or involving violation by client company of paragraph (b) above, and (c) (Your Name) is not responsible for claims made under its fidelity bond unless such claims are reported in writing to it by client company within 30 days after occurrence.*

As you can see, the previous agreement covers a broad range of topics that accurately protects the temporary staffing agency - from employee theft claims to public liability damage. Once the time card is filled out and signed by an authorized representative of the client, the time card then in fact becomes a contract for the named employee. For example, based on the agreement we just saw, if the employee were to be given access to cash, negotiables or other valuables, and a theft occurs, the temporary staffing agency has a signed contract, which puts the burden or responsibility for such act on the client.

### **Contractual Transfer Agreements**

A Contractual Transfer Agreement is an agreement under which one party shifts to another the responsibility for a loss. Three types of this agreement are Hold Harmless Agreement, Exculpatory Agreement and Indemnity Agreement.

A Hold Harmless Agreement is an agreement between two or more parties defining an obligation to make good the liability, loss or damage incurred. Essentially, a Hold Harmless Agreement clarifies the obligations of all parties involved. Take for example this portion of the time card agreement. ***“The client company will not authorize such employee to operate machinery or motor vehicles without permission from the temporary staffing agency, and each instance, temporary staffing agent does not cover loss of damages caused by employees operating client company's owned or leased motor vehicle(s).”*** This language defines the obligations of the client and the temporary staffing agency. If a temporary staffing agency has such a contract in place, the temporary staffing agency can protect itself from several types of losses. The language above exempts the temporary staffing agency from paying for damages caused by any of their employees

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operating machinery or motor vehicles without permission. For example, the client asks an employee to operate a forklift without express permission of the temporary agency, and said employee causes damage to the client's facility – the temporary agency cannot be held responsible for payment for any losses incurred.

An exculpatory agreement, or freedom from blame, is an arrangement whereby one party agrees to absolve the second party from any blame even when damage or injury is caused by the negligence of the second party. Take the above example; if the Temporary Staffing Company and their client enter into an Exculpatory Agreement on their time card, then the client would not be held responsible for any injury or damage even though they were negligent.

Indemnity Agreement or No Fault is similar to a hold harmless agreement. An Indemnity Agreement is an arrangement whereby one party agrees to pay the other party for any damages regardless of who is at fault. A classic example of an Indemnity Agreement is Workers' Compensation.

The time card can also be used as proof of service. On most crime claims the investigating adjuster needs proof of service from the temporary staffing agency with the client in question. Furthermore, the temporary staffing agency needs to prove the said employee who allegedly caused the crime worked for the client. If the temporary staffing agency does not have a signed time card with contract language, the crime claim would be denied and hence the temporary staffing agency is paying for a policy that will never be enforced. Example: ABC Staffing Corporation supplies a temporary worker to EFG National Bank to do general office duties. The supervisor at EFG then places the employee as a cashier. This employee

embezzles money from EFG and they file a claim against ABC Staffing, as it is their employee. ABC Staffing has a crime policy; however, they did not have a time card for this employee and their Insurance Carrier denies the claim, as there is no proof ABC Staffing provided this employee to EFG National Bank. If ABC Staffing has a time card signed by a representative of EFG National Bank then the Insurance Carrier will pick up the claim. However, if ABC Staffing has a signed time card with a Hold Harmless Agreement that states "***The client company will not entrust ABC employee with unattended premises, cash, negotiables or other valuables***", and is signed by a representative by EFG National Bank, then ABC Staffing would not be held liable for the monies embezzled and their Insurance Carrier would not have to pay the claim.

### **Non-traditional Time Card Usage**

Time cards, not unlike the temporary staffing industry, are flexible. Not only can time cards be used to track an employee's hours and serve as a contract, but they can also be used as an agreement showing the client's compliance with all Federal, State and OSHA regulations. In addition, they can be used as verification of an employee's injury or injury free week. Temporary Employees can sign off at the end of the week that they suffered no injuries within that week. Agencies can use the card to display safety suggestions for both the employee and the client. As evidenced above, there are several non-traditional uses for the time card that can serve a Temporary Staffing Agency well. ***However, we do suggest you contact your corporate attorney before making any change to the time card.***

### **Technology and Time Cards**

Losses due to computer viruses are on the rise. Most times this is due to an employee opening an e-mail with a virus attached, which spreads to

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the company's mainframe. In 1997, financial losses due to computer viruses were reported at an aggregate total of \$12,498,150 in the United States. In 2001, financial losses due to viruses were at an all time high of \$45,288,150 in the United States. This is a 270% increase in just a four-year period. Worldwide financial losses due to viruses were reported at \$17 billion. How would a temporary staffing agency protect themselves from losses due to an employee causing virus damage to a client's computer system? The temporary staffing agency would need to get a copy of the client's internet and e-mail regulations, confirm if the employee will have access to these programs and verify this would be part of the employee's job duties. Next, the temporary staffing agency would need to add disclaimers to the time card to protect themselves against litigation or lawsuit due to damage caused by the employee. Lastly contact your corporate attorney to assist in the language of the contract and on the employee's time cards.