

**Doing a Little Consulting or
Outsourcing on the Side?**
**Without a License, Your
Contracts May Not Be
Enforceable**



Don't paint your company into a corner. Learn the ramifications of Employment Agency Act non-compliance.

At **Giordano, Halleran & Ciesla, P.C.**, we know how hard you work to grow your business and carve out a place for your company's services. We also have first-hand knowledge of the risks involved if your company unknowingly provides its customers with skilled consultants without obtaining the proper licensure or registration.

Many consulting companies may think they are in an unregulated business. However, consulting companies providing temporary outsourcing or staff supplementation services may be subject to the strictures of the New Jersey Private Employment Agency Act (the "Employment Agency Act") **even if they are not retained for the purpose of locating prospective employees for their customers.** Data Informatics v. AmeriSource Partners, 338 N.J.Super. 61 (App. Div. 2001). This may be true of companies that are not primarily in the business of providing services regulated by the Employment Agency Act. Among the major risks for consulting companies is the fact that the Employment Agency Act makes contracts entered into by unlicensed/unregistered companies unenforceable.

What's the Catch?

In a down economy, companies try to cut costs by limiting their outside consulting. Rather than engage an outside consultant for a full project, they try to save money by fixing the problem mostly in-house. However, many companies also seek help from short-term, skilled people engaged on a limited basis. Hungry consulting companies respond by gladly offering up their skilled employees on a temporary basis for whatever projects their customers need. Consulting companies who do so risk becoming subject to the Employment Agency Act and, therefore, may be unable to enforce customer contracts unless they are licensed or registered under the Employment Agency Act. You may be subject to the Employment Agency Act, even if the purpose of your relationship with your customers is not to find employees for them, and even if you are not principally in the business of providing temporary skilled workers to your customers.

Non-Solicitation Covenants Won't Help?

You might think that you can't be subject to the Employment Agency Act if you prohibit your customers from hiring your employees and you prohibit your employees from taking jobs with your customers.

However, New Jersey courts have applied the Employment Agency Act to companies which contractually prohibit their personnel from accepting jobs with their customers. In fact, the exemptions from the Employment Agency Act are expressly **inapplicable** to temporary help services firms that inhibit personnel from becoming employed by their customers.

So Who is Covered by the Employment Agency Act?

There are many categories of business that are regulated by the Employment Agency Act. The characteristics of three of the most common are described below.

➤ **Employment Agency.** A company falls into this category if it collects a fee or charge of any type and offers or attempts to procure or assist in procuring employees for an employer. Under related regulations, Employment Agencies don't include companies who place their own employees with clients. An Employment Agency must have a license for the firm and at least one licensed agent.

➤ **Consulting Firm.** A company falls into this category if it identifies prospective employees for an employer and gets compensated only by the employer (not the prospective employee). The regulations suggest that these firms are commonly referred to as "executive search firms" or "headhunters." Consulting Firms must be registered with the State. However, registered Consulting Firms are permitted to perform temporary help services without additional registration.

➤ **Temporary Help Service Firm.** This is a company that assigns its employees to customers to handle the customers temporary, excess or special work loads. Temporary Help Service Firms must be registered with the State.

It is not entirely clear how much of your business has to fall into one of these categories before you become subject to the Employment Agency Act. Since the

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Employment Agency Act is a consumer protection law, however, it is quite possible that a court would apply the law to a company that performed these services only once without being licensed or registered.

What are the Penalties for Not Being Licensed/Registered?

If you are subject to the Employment Agency Act and you are not licensed or registered, the monetary penalties under the Employment Agency Act are up to \$2,000 for the first violation and \$5,000 for each subsequent violation. Violation of a cease and desist order is subject to penalties of up to \$25,000 per violation. These are in addition to any other penalty provided by other laws.

Moreover, failure to be properly licensed or registered may make your company's contracts unenforceable. This could have a much more substantial monetary impact on your business than the statutory penalties.

How Difficult is it to Get Licensed/Registered?

Here are some of the requirements.

➤ Employment Agency License

- Submission of license application
- \$10,000 Bond
- Annual Fee: \$250
- Affidavits from two New Jersey citizens attesting to applicant's good moral character
- All persons performing employment agency services must be licensed employment agents

➤ Employment Agent License

- Submission of license application
- Annual Fee: \$25
- Pass the state employment agent's exam
- Supporting affidavit from the employment agency
- Affidavits from two New Jersey citizens attesting to applicant's good moral character

➤ Consulting Firm & Temporary Help Service Firm Registration

- Submission of registration form
- \$1,000 Bond
- Annual Fee: \$175

So, if your organization is in the practice of providing short-term supplemental consultants to its customers, and you think your company is an unregulated business, think again!

Why Should My Company Use Giordano, Halleran & Ciesla to Ensure That It Is in Compliance with the Employment Agency Act?

GH&C can help your company to navigate the murky waters of Employment Agency Act compliance.

- GH&C offers corporate compliance counseling with respect to the Employment Agency Act.
- GH&C attorneys have a wealth of experience gleaned from counseling clients in a wide range of industries.
- We regularly draft and negotiate consulting contracts for our clients.
- Because our attorneys live and work in the Central New Jersey/Jersey Shore area, they are constantly in touch with your immediate market. Therefore, GH&C has an invaluable knowledge of your general business needs and concerns that out-of-area attorneys simply do not have.
- Our main goal at GH&C is to foster strong and ongoing relationships with our clients. As a result, our clients trust us to attend to their legal needs so that they may, in turn, devote their attention to the growth of their business. We have the experience and desire to address all of your company's legal needs, including matters pertaining to real estate, leasing, intellectual property, licensing, bank loans, venture capital financing, sale of securities, mergers and acquisitions, buy-sell agreements, wills, trusts and estates, and succession planning, to name just a few.

How Do I Contact Giordano, Halleran & Ciesla for More Information?

To discuss your company's Employment Agency Act compliance needs, contact Kurt Anderson by mail, phone, telefax or email:

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Advantage client.

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