



Harry Franzheim—an HR/OD Practitioner for over 30 years—has published this newsletter to bring you careful insight into reducing costs and unlocking employee potential.

## AT ISSUE

*Using staffing agencies usually isn't about treating workers fairly or following labor laws; it's about cutting costs and making more money for the company at the expense of the employees.*

# Five Bad Reasons for Using a Staffing Agency



## HR Fact:

### Joint Employment Compliance

On January 20, 2016, the Wage and Hour Division released an Administrator's Interpretation concerning joint employment under the Fair Labor Standards Act and Migrant and Seasonal Agricultural Worker Protection Act. The interpretation identifies common scenarios in which two or more employers jointly employ an employee and are thus **jointly liable** for compliance.\*

\*U.S. Department of Labor,  
Wage and Hour Division

**D**o you recall the day when large corporations actually employed all of the people working within the enterprise? The janitors, the maintenance workers, security staff, production employees, distribution and logistics employees were all employed by the same employer. Recall when the employer hired them, paid them, gave them health benefits, insurance, pensions and retirement programs. Remember when the employer created internal salary bands based on internal and external equity, which created career paths and increased income opportunities via transfers and promotions. Remember the amount of training and career development that went on in those organizations. How about the tuition reimbursement programs that paid employees to go to college or technical schools to learn a skill, a trade, or an MBA. What happened?

Recently my wife and I attended a staff-

## The Bad Five

- 1 AVOID** expensive labor
- 2 AVOID** the Affordable Care Act penalties
- 3 AVOID** OSHA and WISHA obligations
- 4 AVOID** paying payroll taxes
- 5 AVOID** labor laws, overtime rules, and minimum wage requirements

ing law conference in D.C., sponsored by the American Staffing Association. We learned a lot about compliance and legal issues and we walked away with ideas for improving our business (arbitration agreements for our employees, affordable health care strategies, and how to manage the new FLSA rules regarding classification of exempt employees). But what really caught



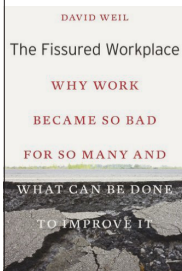
our attention was a presentation by David Weil, Ph.D., on his recent book titled *The Fissured Workplace* (Har-

vard University Press). That's me pictured with David Weil as I was getting his autograph on his book!

### **Hershey and Outsourcing**

David Weil is a professor of economics and the Everett W. Lord Distinguished Faculty Scholar at the Boston University School

of Management and co-director of the Transparency Policy Project at Harvard. He is currently serving in the Obama Administration leading the Wage and Hour Division at the Department of Labor. In his book (as



in his presentation at the conference), he takes direct aim at companies that outsource almost every aspect of their non-core business. He cites the Hershey Company that was once one of those companies that did all of

the work under its own brand including hiring, paying, training, and supervising all of the employees. Today, Hershey outsources operations to many subcontractors to make its products. Those companies outsource their labor needs to a different subcontractor, a staffing agency. Hershey sets the standards on quality and delivery and sets the price for the subcontractors who are competing with other companies to get the Hershey business. Subsequently, instead of Hershey providing real jobs with real wages and offering careers to the workers, the workers actually work for a temp agency and are managed by a subcontracted warehouse/production firm.

### Cutting Costs

Because everyone is competing on price alone, would anyone be surprised that each circle of subcontracted work is taking shortcuts to eliminate costs? Among costs that typically get cut:

- Safety training and personal protective equipment.
- Wages will be set at the minimum wage (or lower if possible).
- Overtime will be required but not paid to employees.
- Payroll taxes and expensive workers' compensation insurance will not be paid.
- Effective management of workers will be cut and replaced with command and control methods.

## Living and Working in a Different Era: Hershey, Pennsylvania



With Milton Hershey's success in the chocolate business came a profound sense of moral responsibility for his workers. Unlike other industrialists of his time, Hershey wanted to provide a community for his workers that included tree-lined streets, comfortable one- and two-story homes with manicured lawns, an inexpensive public transportation system, quality public schools, and extensive recreational and cultural opportunities. There was no outsourcing in Hershey, Pennsylvania, while Milton Hershey was alive, but his efforts didn't last.

## "Fissured Workplace"

David Weil refers to this as the "Fissured Workplace" and like fissures in bedrock, the cracks just keep getting bigger. This he blames for the shrinking middle class and wage disparity. All of this is going on to make Hershey more profitable and to satisfy its creditors and investors.

You can imagine that inviting this guy, the author of the book, to speak at the American Staffing Association annual legal and compliance conference might rattle a few attendees. But it didn't. In fact, in his opening comments Weil noted the obvious disconnect but he was pleasantly surprised by the warm reception ... "someone even asked me to sign my book"!

But then you think: Why would a staffing and employment agency that is taking shortcuts on safety, wages and hours, payroll tax, and workers' compensation pay to attend a law conference on staffing compliance? They likely would not!

### Employment Agency

This made us proud. Yes, we are in the staffing industry and there are many agencies that willingly and knowingly participate in the "Fissuring of the Workplace," but we are one of the good guys. We won't do business with firms that are taking shortcuts with our employees. We don't even want our employees on our payroll very long; we want them on yours. New Era HR is more of an employment agency than a temporary staffing agency. We perform the recruiting and training function of your human resources department. We specialize in finding talent that can improve your organization.

We aren't cheap, because we play by the rules. We won't compete on price alone. We don't have an interest in furthering the fissuring workplace. Partner with New Era HR to upgrade your workforce and to find your next great employee! **ne**

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New Era HR Solutions is a locally owned, privately held staffing and HR consulting company with the mission of creating sustainable employment opportunities for our employees by improving the business performance of our clients.

New Era HR can help you find, harness, and sustain the talent you need to grow your business. We offer training and development services and on-site coaching for leaders at all levels of the organization.

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