

Scott Mirsky Publishes Article On Eligibility Issues For Staffing Agency Hires on Law360

Scott Mirsky published an article titled "FMLA Case Shows Eligibility Issues For Staffing Agency Hires" on Law360 on December 11, 2019.

The article discusses how businesses using staffing agencies for temporary-to-permanent workers must tread carefully when navigating the eligibility requirements of the Family and Medical Leave Act (FMLA).

"Many businesses turn to staffing agencies to supply workers on a temporary-to-permanent basis in hopes of determining a worker's suitability and to reduce the costs of a poor hiring decision. With this type of arrangement, the worker is typically hired by the staffing agency and remains on the agency's payroll during the temporary portion of the assignment and, if the business later decides to hire the worker on a permanent basis, the worker is converted onto the business's payroll."

However, from the first day that a worker begins providing temporary services to a business through a staffing agency, the business is a "joint employer" under the Family and Medical Leave Act ("FMLA") and this is the start date that businesses must use when calculating a worker's eligibility under the FMLA.

As demonstrated by a recent enforcement action against Imperial Trading Co. LLC, a Louisiana convenience store distributor, the U.S. Department of Labor is cracking down on businesses that fail to recognize that they are joint employers and the DOL is requiring these businesses to pay monetary damages when they miscalculate a worker's eligibility for FMLA leave."