

Evaluating Your Staffing Agency: A Risk and Value Perspective

Intro: Welcome to Strategic Insights brought to you by PrideStaff. On each episode we bring you interviews with leading management and employment experts from across the country. Your host for Strategic Insights is Brad Smith. And now here's Brad.

Brad Smith: Hello and welcome to today's episode of Strategic Insights brought to you by PrideStaff. I'm your host Brad Smith. Today we're going to dive into a topic that's critical for businesses that rely on staffing agencies to help them augment their workforces and be more strategic in how they manage their staff. We're going to do a deep dive into how to evaluate your current staffing provider and ensure that they're providing value and protecting your organization. Today we're excited to have Mike Harris with us, an expert in staffing agency evaluation, owner of the South Riverside County and Ontario PrideStaff office. Mike's going to help us walk through the key factors to look for in a legitimate and reputable staffing partner. Mike, thank you so much for joining us.

Mike Harris: Brad, thank you for having me to address important factors for companies to consider both when choosing and evaluating reputable staffing agencies. Unfortunately, they're not all the same.

Brad Smith: You've got that right, Mike, they certainly aren't. And we've seen both sides of that for sure. So, let's jump in and talk a little bit about why this is such an important topic. If you don't mind, start by giving us an overview of why businesses should even care about maybe the ethics or the practices of their staffing agency. Why is it so important to them?

Mike Harris: Absolutely. Unethical practices, like unpaid wages, lack of workers' comp insurance coverage, put the business at a significant risk. And, unfortunately, businesses are legally liable for unlawful actions of their staffing providers, especially in states like California, New Jersey, and others where the joint employment law provisions are important and must be adhered to. So, working with an agency not playing by the rules can lead to fines, lawsuits, severe financial penalties as seen in cases like Del Monte Foods where their staffing agency was placing undocumented workers, and after ICE raids at Del Monte, that resulted in 1.3 million settlements. So, in addition to that, I mean, the reputational damage alone for businesses associated with unethical partners can just be as costly. In markets that I serve, it's not just the small independent agencies but it's also regional, national, very large agencies that don't adhere to the rules.

Brad Smith: And I think it's really important to understand what the rules are in your state, in your district, in your area, in your county. And as you mentioned, Del Monte

got hit with \$1.3 million. That is a hit. Now they're a rather large organization and they can probably weather that. But think about a medium to small-sized organization, that could put you out of business. And I think there's this misnomer that you don't need to know what your staffing company is doing. You do. You need to make sure that they're on point and they're doing things ethically and legally. So, Mike, building on that, what are maybe some red flags that businesses, hiring managers, procurement, HR should watch for when they're evaluating whether their current staffing agency is legitimate, is ethical, is following all those best practices?

Mike Harris:

Right. So first, the inability to provide a certificate of insurance. And ideally, to get that certificate directly from the broker as opposed to just receiving it from the agency. Our insurance broker had shared with us, sometime in the past, that they had discovered that a fraudulent certificate of insurance actually signed by their CEO was being used by an agency. So, you want to make sure that you're getting a certificate of insurance. And to the extent that you can, get it directly from the broker. Also, offering rates that seem too good to be true, especially in industries where the workers' comp insurance premiums are high because of the risk of injuries and safety incidences that they may have had. Staffing agencies may be able to offer better rates through self-insurance. However, the risk associated with that is ... If that company, that agency has a major injury, even if it's at another company, the company that they're serving, the client that they're serving could be liable for paying temporary associates their payroll, their payroll taxes, and all employment associated liabilities.

Lack of transparency in hiring, especially concerning the I-9 compliance can cause issues. You might think or ask why would a staffing agency even place undocumented workers. Well, some have been able to get by with paying those undocumented worker's below minimum wage. Where else are they going to get work if they're not eligible to work in the US? Or we've even known companies where their agency was billing the client at overtime rates. For in California over eight hours a day or 40 hours a week. But we're not paying the undocumented workers overtime rates. The final is, if there's an injury of an undocumented worker, they're ... Likely will decline any medical treatment for fear of being exposed of their undocumented status. And there have been agencies with a history of workers' compensation and payroll fraud like CheckMate Staffing and Optimum Staffing that went bankrupt after settling claims.

Brad Smith:

Wow. So, you understand the finances behind the staffing model, obviously. When you are running into a market where you just see a bill rate or a rate that's too good to be true, I'm assuming immediately you're thinking potentially undocumented workers or something else going on, right?

Mike Harris:

Somehow, they're not adhering to some level of compliance whether it be undocumented workers or they're putting people in warehouses on office workers' comp code which is much lower in rate. Yeah, it raises a flag. And I

think the smarter companies that use agencies, they're going to drill down, they're going to try to understand that.

Brad Smith: And you can no longer claim ignorance here as the end employer, you just can't, it puts you at an extreme risk. So, let's talk about some of those risks. Walk us through how businesses are legally liable for the actions of their staffing agency.

Mike Harris: Absolutely. Under laws like in California where there was a bill, 1897, that became a law in 2014, clients are jointly liable for hour and wage violations, worker compensation insurance claims, or where the agency is under covering workers' insurance, as well as worker ... Workplace safety breaches by the staffing agency. Second, the Department of Labor's Temporary Worker Initiative reinforces businesses are accountable for ensuring fair wages and safe working conditions for temporary staff due to the joint employer law provisions. And fines and penalties are typically not even covered by insurance which can lead businesses exposed if their staffing partner is non-compliant. One of the largest staffing agencies filed for bankruptcy after they were found guilty for a \$50 million workers' compensation insurance fraud.

Brad Smith: Wow. \$50 million, that's unbelievable. Walk us through, if you don't mind, what businesses can do to ensure they're working with a reputable and compliant staffing agency. I know you mentioned earlier you were talking about certificates. Walk us through other things that they should be looking for.

Mike Harris: A good question. So always request a certificate of insurance. As I mentioned earlier, ideally getting that directly from the insurance broker. And make sure you're getting an updated certificate of insurance every year. You just don't know if that particular staffing agency, their insurance company, has dropped them and they don't have insurance the year after. So, make sure that you're getting updates. Have the agency put in writing what the workers' compensation insurance code is for the position so that you are confident that the agency is using the right code. And that they're using a credible underwriting source. When I submit a proposal to my client, I will put in writing the worker's comp code and associated rate that was provided by PrideStaff's risk management team. If that company's insurance company, for the same position, has a different code and therefore different rate, I want to make sure that I'm not putting my business or my client's business at risk. So, we're going to reconcile that. And there are times where I'll be higher in the rate because, again, I don't want to put their business or my business at risk.

So, the other thing you can do, ask the staffing agency for the right to inspect I-9s to ensure compliance with immigration laws and avoid the use of undocumented workers. Lastly, review the staffing agency's costs carefully. If that markup is too low and too good to be true, it could indicate noncompliance with legal employment standards such as statutory costs, affordable care benefit costs, paid sick leave. I've mentioned several times worker comp insurance. As well as any client required drug and background screens that agency may not be conducting.

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Brad Smith: Now Mike you outlined a lot of due diligence there. In your experience, what percentage of companies that you're working with actually do all of this on their own?

Mike Harris: I think the more mature companies that have used agencies, and quite frankly, have maybe even gotten burned, right, will do it. But that's just probably maybe 30%. Frankly, I will use it with a client ... When I try to point these things out, when I believe their agency, that they're currently using, might be doing some of these things that put their ... That business is at risk, that client's business at risk. If after pointing those things out that client looks at me and says, "Well, that's not my problem it's theirs." Frankly, I use that as a qualifier because I want to make sure that I'm working with a company that is doing things by the book and is concerned about ... The partners that they engage to help them run their business are also doing things by the book.

Brad Smith: And you can't have a worker that you're placing in one worker's compensation insurance code and find out that they're in a much riskier class. That puts you at risk, that puts the client at risk. So, it is very important to do your due diligence as Mike just outlined. Now Mike, what are some real-world examples of companies that faced some consequences from working with an unethical staffing agency? I know you mentioned Del Monte earlier and there was another example. What are the actual real-world risks here?

Mike Harris: So, you're right. Del Monte, they got burned, right, when the ICE raids took place, and they had the \$1.3 million settlement. Others include Lucca Freezer & Cold Storage, J&J Snack Foods, and ICS Corporation. All faced fines ranging from 500,000 to 2.1 million for wage violations on the part of their agency. Another very large staffing agency filed for bankruptcy after being found guilty of a \$50 million workers' compensation insurance fraud scheme.

A couple examples in my market. One of the clients that we were serving, prior to us engaging with them, they had an agency that was placing undocumented workers. This was a specific example where an undocumented worker did get injured, cut her finger pretty badly, needed stitches, and the agency sent an Uber to pick that person up to take her to a medical facility to get treatment. By the time that Uber got there she had left and never returned. For the reason that I mentioned earlier, for fear of being exposed of their undocumented status. There are companies and agencies that will take advantage of that. They would love to not have to deal with workers' comp claims, right, so they'll use undocumented workers because they know they're unlikely to use and seek medical treatment for injuries.

Another company that we've worked with ... Before we started working with them, I received a call from the president. This particular company had 32 temporary associates from an agency that was self-funding their worker comp insurance. What happened, however, was at another business that they were serving, another client of theirs, the agency's, there was a major injury that basically depleted their entire funds of the self-funded workers' comp fund that

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they had. The president of the company that called us said, "We have 32 workers that we'd like to be able to transfer them all to you." Because they knew that they were going to be liable for all the payroll costs and associated employment costs for those when that company filed, basically, bankruptcy. And, unfortunately, we weren't able to move all the people over because many of them did not even meet our hiring criteria which is ... Was another flag for the agency and what they were doing with some of their people.

Brad Smith: For sure, yeah. And to your earlier point, if it's too good to be true it is. If that cost structure doesn't align with what you're seeing elsewhere in the market, with other competing staffing, there's a reason for that. That is a huge red flag. So, Mike, you do some due diligence with your clients. You do consulting, you do risk assessments. Or is there a performance assessment tool you use to help businesses evaluate the value and the risk management of their staffing agency?

Mike Harris: Yeah. We've talked a lot about risk. Whatever tool you use to assess and evaluate your agency you need to look at both potential risks, a lot of the risks we talked about, the I-9s, the workers' comp, wage and hour compliance. But it's also important to know the key metrics to evaluate the business value of that agency and their service delivery. Some of the key metrics are things like time to hire. How long does it take them to fill those critical positions that are important to your business? Fill ratios. If the client requires 10 people by a certain date, how many of those 10 people ... What percentage of the 10 people actually got filled by that date? If it's a temp-to-hire position, right, how many of those associates that they placed in those temp-to-hire positions, right, actually convert when they can convert, right? What percentage, right, that when they reach their conversion hours that client is able to hire them at no additional cost? So those are things that are important.

Does that agency conduct and share references, right? Do they provide you value adds beyond just the service delivery that are important to your business? We have a tool that we provide to our clients that provides a structured approach to assessing service quality and value, compliance, and risk mitigation. The tool helps businesses identify gaps in their staffing provider's service delivery, especially regarding safety, ethics, and value adds. Finally, the tool encourages continuous improvement and transparency between the client and the staffing agency ensuring mutual accountability.

Brad Smith: So, Mike, how does someone get access to these tools? Can they simply pick up the phone and call and schedule some time to walk through that?

Mike Harris: I'd be happy to share it. Whatever I can do to contribute to really ensuring that we're taking the staffing industry up to a level, right, that companies can have a complete confidence in the agency that's serving them is meeting their needs and keeping their business having no undue risk.

Brad Smith: So, Mike, thank you so much for your time today. Final question for you, and it's going to be a summary question. Share with us some best practices for businesses that still want to protect themselves, still want to work with an ethical partner but want to ensure they're getting the most value from their staffing agency.

Mike Harris: Good question. So first, establish clear contractual obligations regarding things like workers' compensation, right? Wage compliance, safety standards. All the things that you are jointly responsible for, make sure that there's a clear understanding of what the agency's responsibility is and what you as a user of that agency are responsible for. Do regular audits of the staffing agency's insurance coverage. I mentioned, get that certificate insurance, get it updated every single year, request it, right? And ideally, if you can get it directly from the broker so that you know that it's valid. Continue to monitor the service delivery value, the metrics that I mentioned earlier, right? Those things are important to ensuring that particular agency is providing the value and meeting the expectations. Because you want to ensure that it doesn't change, and that the agency doesn't become complacent over time. So, continue to monitor those things. Finally, maintain open communication and full transparency with the staffing partner to ensure that their continuously adhering to ethical practices, legal standards, and your expected service delivery expectations.

Brad Smith: I think that open communication is key, Mike. If you were in the hiring manager's seat and you asked the staffing company for their insurance certificate or the name of their broker and they got really nervous, what would you do?

Mike Harris: Well, it would tell me right away that I just qualified that agency and it's time to look for the next for sure, for sure.

Brad Smith: Yeah, for sure. So, make sure you're inquisitive, make sure you ask those right questions, make sure you do your due diligence. Mike, thank you so much. You provided so much value today into effective ways to better evaluate staffing agencies. It's clear that protecting your business is going to go beyond just finding somebody that can supply workers, that can fill those open positions, you need to partner with somebody who operates ethically, legally is following the right compliance and insurance rules. For those listening, take a closer look at your current provider. Ask those questions, ask for that documentation that Mike mentioned, and ensure they're meeting the standards that we discussed today. If you're unsure talk ... Use as assessment tool like the one Mike mentioned. Reach out, visit PrideStaff.com. Connect with your closest local office, schedule a time to talk. As Mike mentioned earlier, PrideStaff takes risk and risk assessment very ... They're very critical over that. They have an entire department, a team internally that can help manage that. Mike, again, thank you so much for your time today. Thank you for your insight, we truly appreciate it.

Mike Harris: Thank you, Brad.

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Brad Smith: Take care everyone. Thank you so much for listening. Bye.

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