

February 16, 2007

Commissioner Click Bishop  
Department of Labor and Workforce Development  
State of Alaska  
PO Box 111149  
Juneau, AK 99811-1149

Commissioner Bishop,

The Alaska State Chamber of Commerce just learned that the Department of Labor and Workforce Development is in the final stages of developing regulations under the Alaska Employment Security Act that could have an extremely negative impact on Alaska's temporary and contract staffing employers and, as a consequence, on the state economy. To our knowledge, the Department of Labor made no effort to contact any staffing firm in the state to solicit their views on how the proposed regulations would affect them.

The fundamental premise of the staffing business is that the staffing firm is the employer of record of the employees it assigns to its clients. The proposed regulations (copy attached) would dramatically change the business relationship between staffing firms and their clients by making the client the employer of record for any employees assigned more than 12 months. This would have a major negative impact on the demand for our services.

The proposed regulations also contain a confusing, and potentially devastating, provision the intent of which, according to a representative of the Labor and Workforce Development, is to deny employer of record status to a temporary services employer even when it assigns an employee to a client for *less* than 12 months if the employee's work is determined to be "seasonal." The regulation does not define "seasonal," but whatever it means; if the provision were construed in that manner, it would effectively prevent staffing firms from assuming their traditional employer role for much of their business.

We've been informally advised that the proposed regulation may be a response to a 2005 decision by the Employment Security Division Appeal Tribunal involving the employer status of a "professional employer organization" (PEO)—the Tribunal ruled it was not an employer. The regulation also supposedly was intended to address concerns that "leasing" and temporary staffing services are somehow causing the state to collect less money in unemployment insurance premiums. If those are the issues, the proposed regulation is not the right answer.

The Alaska State Chamber of Commerce has strongly supported efforts to ensure that all employers pay the appropriate amount of unemployment insurance premium. Arrangements designed to circumvent the experience-based rating system for determining unemployment insurance rates are unjustified.

Staffing firms have reason to be especially concerned about such arrangements. Like other service businesses, staffing firm labor costs are a much larger portion of their total costs; and payroll taxes, including SUTA, are therefore a larger part of their total tax burden. Staffing firms' SUTA taxes tend to be even higher than most other service businesses because of the transitory nature of the temporary workforce. So when other employers don't pay their fair share of those costs, it drives trust fund levels down and SUTA taxes up and staffing firms get hit disproportionately.

That is why the State Chamber supported legislation passed by the Legislature last year that brought the State of Alaska into compliance with Federal legislation passed in 2004 addressing the issues of State Unemployment Tax dumping. The federal legislation established a nationwide minimum standard for curbing certain unemployment insurance tax avoidance activities by employers.

The proposed regulation does nothing to address SUTA-dumping. It simply imposes an arbitrary limit on the length of staffing assignments. Ironically, requiring staffing firms to terminate assignments prematurely that might extend beyond 12 months may actually result in higher unemployment costs if the staffing firm cannot find a new assignment for the individual and he or she files for benefits.

The proposed regulations borrow heavily from the California Unemployment Insurance Code (Sec. 606.5), but the California law does not impose time limits on the length of staffing assignment or shift unemployment insurance liability to the client. Indeed, no state does that. The length of a temporary assignment does not determine who the employer is. That is a fact issue that can and should be determined on a case-by-case basis according to traditional legal principles. Under the laws of every jurisdiction, staffing firms are considered the employer for employment taxes with some courts holding that the staffing firm is the sole employer for that purpose.

We would greatly appreciate the opportunity to discuss with you the impact of the proposed regulations on the staffing industry before the rules are finalized.

Yours in economic prosperity,

Wayne A. Stevens  
President/CEO

cc: Governor Sarah Palin  
Lt. Governor Sean Parnell