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Newsletter

The Independent Recruiter's Resource for Temporary and Contract Placements

Issue No.01

1st Quarter 2003

TFI/HAAPC COMMUNITY SERVICE AWARD

Judy Collins presented the 2003 TFI/HAAPC Community Service Award to **Sue Burnett**, founder and president of Burnett Staffing Specialists, at the annual awards banquet of the Houston Area Association of Personnel Consultants held on March 28th at the Briar Club in Houston, Texas. The TFI/HAAPC



Community Service Award is presented annually to a HAAPC member who has provided a significant contribution to the community during the preceding year. TFI provided a check in the amount of \$500 which shall be given to the charity of Sue's choice. Sue has requested that the award be donated to Goodwill Industries.

OTHER NEWS.....

TFI now offers criminal **background screenings** through BackgroundChecks.com. This service provides instant local and state searches on any prospective temporary or contract employee. If your client company requires a background check, let us help! State laws differ on obtaining authorization and reporting requirements, so please check with us if you are not aware of your state's requirements.

TFI was proud to present the **2002 TFI/MAAPC Community Service Award** in association with the Mid-Atlantic Association of Personnel Consultants in Philadelphia, Pennsylvania in January. Judy Collins presented the award to Bill Saloukas of Broad Waverly Staffing Services. Bill requested that the cash donation provided by TFI Resources be forwarded to the Ronald McDonald House.

TFI sponsored the March meeting of the **Dallas/Ft. Worth Technical Recruiters Network** in Dallas, Texas. The DFWTRN is a network of high-tech recruiters and human resource professionals specializing in high-tech recruiting in the Dallas/Ft. Worth metroplex.

TFI TIDBITS.....



Tracy Elder is the newest member of our TFI team . Tracy is a recent graduate of Lamar University with a degree in Environmental Science. She is an account representative for various local and national accounts.

Kim Horrell, our national marketing coordinator, recently welcomed the addition of Gweneth Paige Horrell into her family on August 18, 2002. And **Jeanae Morris**, an account representative with responsibility for several Texas accounts, added Makayla Avery Morris to her family on October 3, 2002. The babies are doing fine and both moms are back at work!

LOOKING AHEAD.....



TFI will be out and about this year at various conventions, meetings, banquets, etc. Take a quick look at our schedule to see if we are going to be in your area. If so, we would love to see you!

May 1-3: Texas Association of Personnel Consultants Conference, Omni Hotel, San Antonio, Texas.

May 1-4: California Staffing Professionals' Staffing & Recruiting Conference 2003, Flamingo Hilton Hotel, Las Vegas, Nevada.

May 14: TFI will sponsor the Minnesota Association of Personnel Services owners and managers meeting at the Radisson Hotel and Conference Center in Plymouth, Minnesota.

May 21: TFI will present the 2003 TFI/IRG Community Service Award at the Independent Recruiters Group monthly meeting in Dallas, Texas.

August 14: TFI will sponsor the Illinois Staffing Association owners/managers breakfast in Chicago, Illinois.

September 17-20: National Association of Personnel Services Conference, Sheraton New Orleans Hotel, New Orleans, Louisiana.

October 27-30: American Staffing Association Convention, The Mirage Hotel, Las Vegas, Nevada.

CONTRACT LABOR

The issue of 1099 vs. W-2 classification continues to be of prime interest to many recruiters who place highly compensated temporary or contract personnel. The following article originally appeared in a workbook for Texas employers published by the Texas Workforce Commission but the information is relevant for all states and for anyone who is considering classifying a temporary or contract worker as an "independent contractor."

Following article reprinted from the "Especially for Texas Employers" manual published by the Texas Workforce Commission.

"Contract labor" is the most widely used misnomer in business today. The issue is really whether a given worker is an employee or an independent contractor. In basic terms, an employee is someone over whose work an employer exercises direction or control and for whom there is extensive wage reporting and tax responsibility. An independent contractor is self employed, bears responsibility for his own taxes and expenses, and is not subject to an employer's direction and control. The distinction depends on several factors and is by no means limited to the fact that a party designates itself as one or the other.

The Texas Unemployment Compensation Act defines contract labor only indirectly. "Employment" is defined as "...any service...performed for wages or under any contract for hire, written or oral, expressed or implied..by an individual..until it is shown to the satisfaction of the Commission that such individual has been and will continue to be free from control or direction over the performance of such services both under his contract of service and in fact."



It is important to note that it does not matter that one or both parties simply call their arrangement "contract labor."

The above definition makes clear that the important consideration is the underlying nature of the work relationship. The law creates a presumption of employment and places the burden for proving otherwise on the employer. The primary factor in determining an independent contractor relationship is the absence of direction and control over the work.

The Texas Workforce Commission is charged with auditing businesses to ensure that employee wages are properly reported and appropriate taxes are paid on such wages. If the TWC rules that an employer has failed to properly report all wages and pay taxes, it will assess back taxes, interest and penalties. If an employer is found guilty of failing to pay appropriate taxes, the TWC will inform the Internal Revenue Service that the non-paying employer is not entitled to the federal tax credit for the wages in question, which in turn can lead to an IRS audit.

Any employer using what it considers to be "contract labor" should ask itself the following questions:

- Is the service provided by the individuals in question essential to, and an integral part of, the service the employer provides to the public? If an employer is unable to offer its primary services without the help of the individuals in question, those workers will most likely be considered employees.



- What opportunity for profit or risk of loss is there for the worker? What kind of investment, other than time, does the worker have in the enterprise? An employee is paid for his time. An employee is not expected to provide his own workplace, materials, tools and supplies, or to invest his own money in the business. If an employee makes a costly mistake, you can fire him, but you cannot legally force him to work without pay. An independent contractor, on the other hand, is an independent business person with expenses of his own. He will be expected to provide or purchase everything he needs to do the job. If he fails to perform the work according to specifications, he would be required to redo the work for no additional compensation, or else face legal action for breach of contract.
- What is the compensation arrangement? Is the worker paid by the job? Does he negotiate his compensation?

WHAT IS AN INDEPENDENT CONTRACTOR?

For purposes of unemployment insurance law, anyone who provides services for your business is presumed to be your employee until you prove to the Commission that you have no right to exercise direction

or control over the work performed. This means that the occasional person employed to fill in for a sick or vacationing employee is your employee. Likewise, the individual you hire to help you over a temporary busy spell is your employee. And someone hired to do miscellaneous work or chores at your place of business, even if just for a few hours, is also most probably your employee. The issue of who has direction or control of the work depends more upon the actual, day-to-day practice of the work than upon the way the relationship is theoretically described on paper.

