

Company May Be Liable for Temporary Worker's Discrimination Claims

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A recent decision by the U.S. Court of Appeals for the Third Circuit, *Faush v. Tuesday Morning, Inc.*, is a reminder that companies that utilize employees of staffing companies are not insulated from employment law claims. In *Faush*, the Court held that a company may be liable for discrimination under Title VII, even though the employee in question was employed by a third-party staffing agency. This decision is only the latest effort by courts and governmental agencies to examine the use of staffing companies and to determine that companies using temporary labor are joint employers. For example, as we **reported in late August**, the National Labor Relations Board (NLRB) recently held companies may have a duty to bargain with unions representing temporary employees who are supplied by staffing agencies.

In *Faush*, the plaintiff filed a discrimination lawsuit against Tuesday Morning, Inc., a retailer, even though the retailer had not been his direct employer. Specifically, the retailer had entered into an agreement with a staffing agency to provide it with several temporary employees, including the plaintiff, to help with the opening of a new store. The retailer did not pay the temporary employees directly and did not have the authority to hire and fire the temporary employees. However, the retailer supervised the temporary employees in the day-to-day performance of their job duties, provided temporary employees with site-specific training and necessary equipment and materials, and kept track of temporary employees' hours. Weighing these factors, the Third Circuit found that the retailer exercised sufficient control over the temporary employees to be considered as a joint employer under Title VII.

While many companies utilize workers supplied by staffing companies in order to avoid a direct employment relationship and related legal obligations, the decision makes clear that the user companies may nonetheless be joint employers. This means that companies need to think carefully about how much control they exercise over individuals employed by a staffing company and ensure that basic employment standards are being met.

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