



DIRECT HIRE AGREEMENTS - AVOID PAYING TWICE FOR THE SAME TALENT



We hope you have been enjoying a restful and fun Labor Day Weekend.

We are switching gears this week to deliver a “practice pointer” about a real-world problem that we see across client types and industries – companies having to pay two recruiting firms for filling the same position. Our hope is that this Monday Minute will help your organization avoid getting hit with double fees.

Background

The labor market – especially for executives and licensed professionals – remains extremely tight. This has led companies to lean into the use of “direct hire placements,” where recruiting firms are engaged to fill an open position in exchange for a fee based on a percentage of the first-year salary for the position (typically within a 20%-30% range). This fee can be significant for a highly-paid executive. **You don’t want to have to pay two (or more) fees for the same position!**

Why would my company owe double placement fees?

Like all organizations, recruiting firms design their direct hire agreements to protect their own interests. Nearly all of the stock agreements recruiting firms use require payment of a fee if a candidate they present to your company is hired within a particular period of time (6-12 months, ordinarily). Where a company isn't using an "exclusive" search arrangement, the company may have engaged several recruiting firms to fill the same position. The company may have recruiters, managers, executive team members, and even board members working to fill the same position and in contact with different recruiters. When those individuals don't communicate with each other, multiple recruiting firms present the same successful candidate. Because your company has accepted the stock recruiting firm agreement, it can be on the hook for a fee to each firm that presented the candidate.

How do I protect my company?

Carefully review direct placement agreements and consider the following edits/updates:

- Require that all candidates for the same position be referred through a single point of contact who can keep track of double referrals;
- Include a "first presented" clause that expressly states your company will only be obligated to pay one fee for the same position, typically to the firm that first presented the candidate;
- Require that a recruiting firm be engaged to recruit for a particular position in order to receive a fee (rather than a stock agreement that provides a fee is earned for any candidate presented by the firm and hired by the company, which can lead to "resume dumping");
- Include an exclusion from paying a fee where a presented candidate is already in the hiring process (typically, the recruiting firm will require the company to declare and prove a candidate is "in process" within a few days after presentation);

In addition to agreement updates, faithful use of an applicant tracking system can help avoid these pitfalls. In a fast-paced environment with many positions to fill, it can be difficult to keep track of when a resume has been received and reviewed already. Database tracking can help you spot duplicate submissions early and avoid double billing.

Recruiting firms are a helpful tool and nothing in this Monday Minute is a knock on them – of course they should be compensated for their valuable work. We just don't want to compensate multiple firms for the same position.

**This client alert is for informational purposes and is not legal advice. View [previous issues](#) of Monday Minute.*

What's Next?

Crafting a clear and comprehensive direct hire agreement can help avoid confusion and double billing. If you would like assistance in reviewing the elements of your direct-hire placement agreement, please reach out to:

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