

State Health Care Staffing Law Update

Jarin Dana

Sarah Kroll-Rosenbaum

Montaye Sigmon

March 7, 2024

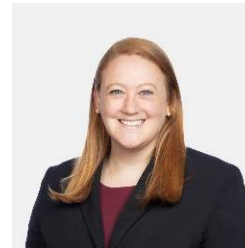
A large field of red poppies stretches towards a horizon where the sun is setting, creating a warm, golden glow. The sky is filled with soft, white clouds. The field is dense with flowers, and the sun's rays are visible as it dips below the horizon.
akerman

Akerman Staffing Law Sector Team

We Provide Integrated Legal Services to Staffing Companies

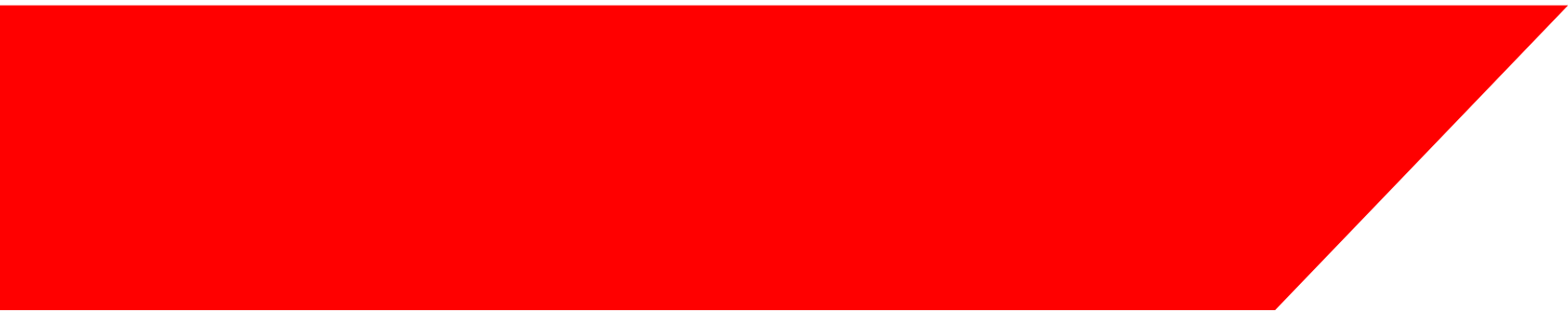


- Litigation, Arbitration, and Investigations
- Commercial Transactions
- Legal Compliance
 - *wage and hour*
 - *state staffing laws*
 - *employment*
 - *immigration*
 - *privacy*
 - *benefits*
 - *payroll tax*
 - *HIPAA*



akerman
Staffing Law

Antitrust Reminders



Why We're Careful...

- NALTO is a trade association: a group of *competitors* who meet and share information.
- NALTO is particularly susceptible to antitrust scrutiny.
- Members of NALTO may be investigated, even for things that are not “*especially heinous.*”
- ALL agreements between competitors must be scrutinized for legal compliance.

Never Excusable; Completely Prohibited

- × Agreeing to raise or maintain price – price fixing or bid rigging.
- × Discussing or coordinating a price increase or terms of sale.
- × Discussing or coordinating a decision not to discount or the level of discount.
- × Sharing price lists or discount/incentive information.
- × Dividing customers, jobs or territories with a competitor.

Framework for Discussion



Terminology

What is a *locums tenens* agency?

For our purposes today:

- Physicians (MDs and DOs)
- Physician Assistants
- Advanced Practice Registered Nurses (Nurse Practitioners, Certified Registered Nurse Anesthetists, Certified Nurse Midwives, Clinical Nurse Specialists)
- Not covering other personnel (e.g., Physical Therapists) – does NOT mean they may not be subject to some of these laws.

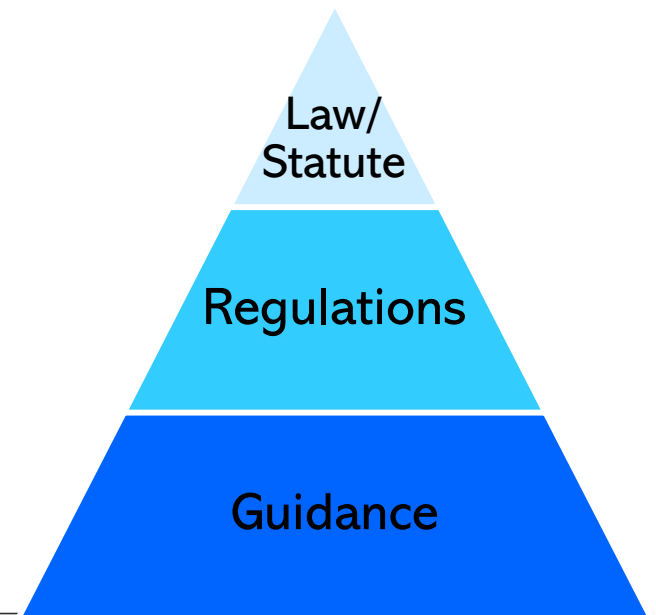
Terminology

Which legal lenses are we looking through?

State Temporary Health Care Staffing Laws (a/k/a “State Laws”).

- Nurse Agency Law
- Nursing Service Agency Law
- Nursing Pool Law
- Health Care Services Agency Law
- Supplemental Health Care Services Agency Law
- Temporary Staffing Agency Law
- And other names . . .

Laws/statutes versus regulations
versus guidance.



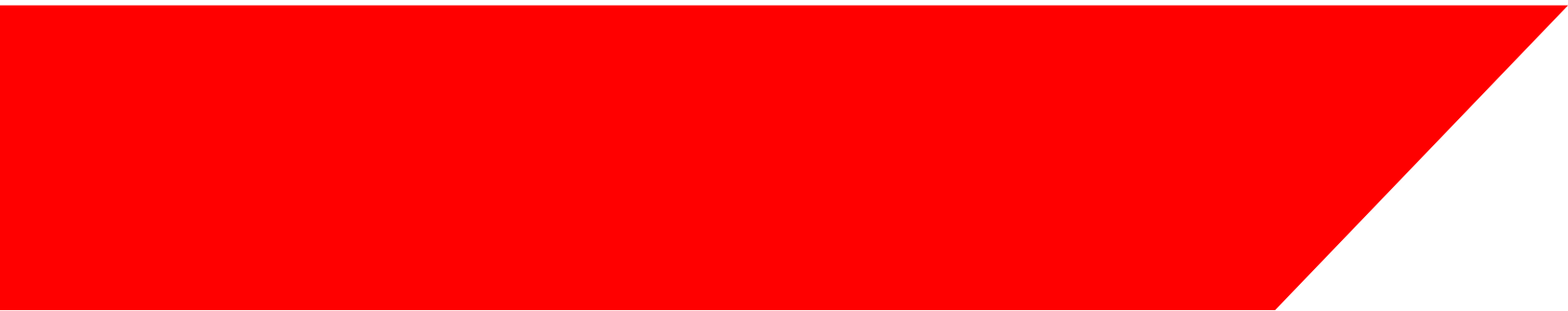
State Health Care Staffing Laws

Laws that directly regulate provision of temporary health care personnel.

Requirements:

- Registration/Licensure
- Reporting
- Mixed Bag of Other Stuff (e.g., contractual requirements and prohibitions, rate caps, insurance requirements, credentialing requirements)

The NALTO Guide



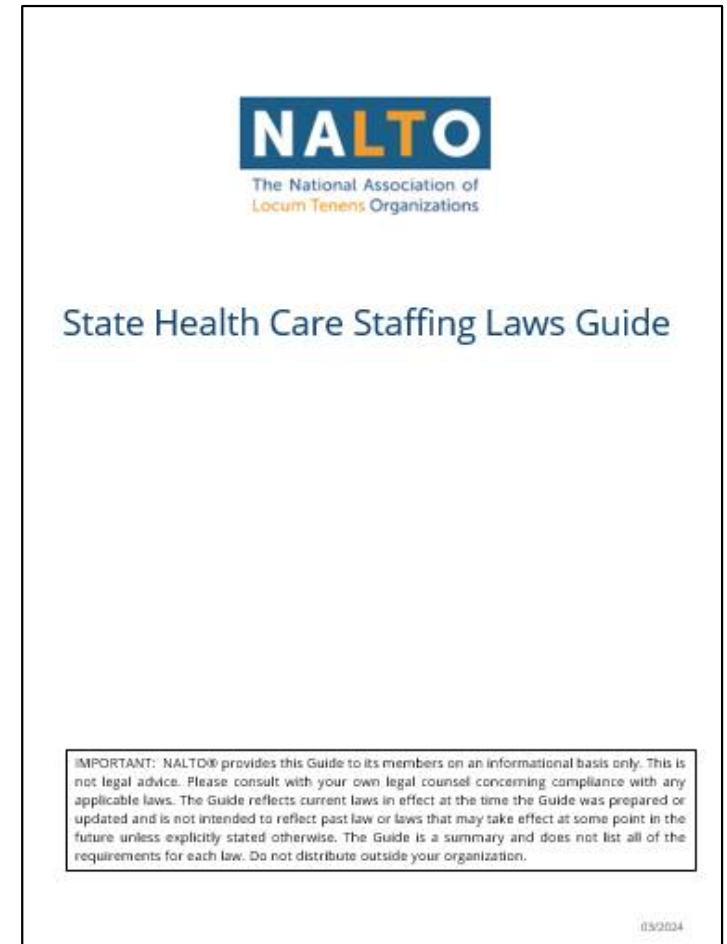
NALTO Guide

What is it?

- Booklet with overview of 25 current state health care staffing laws and their potential application to locum tenens agencies.

Where is it?

- Available if you are logged in to your NALTO member account.
- Printed copy of current issue available here.



NALTO Guide

How do I use it?

- Starting point to evaluate whether your agency is subject to a particular law.
- Key information with links to relevant compliance information.

How often is it updated?

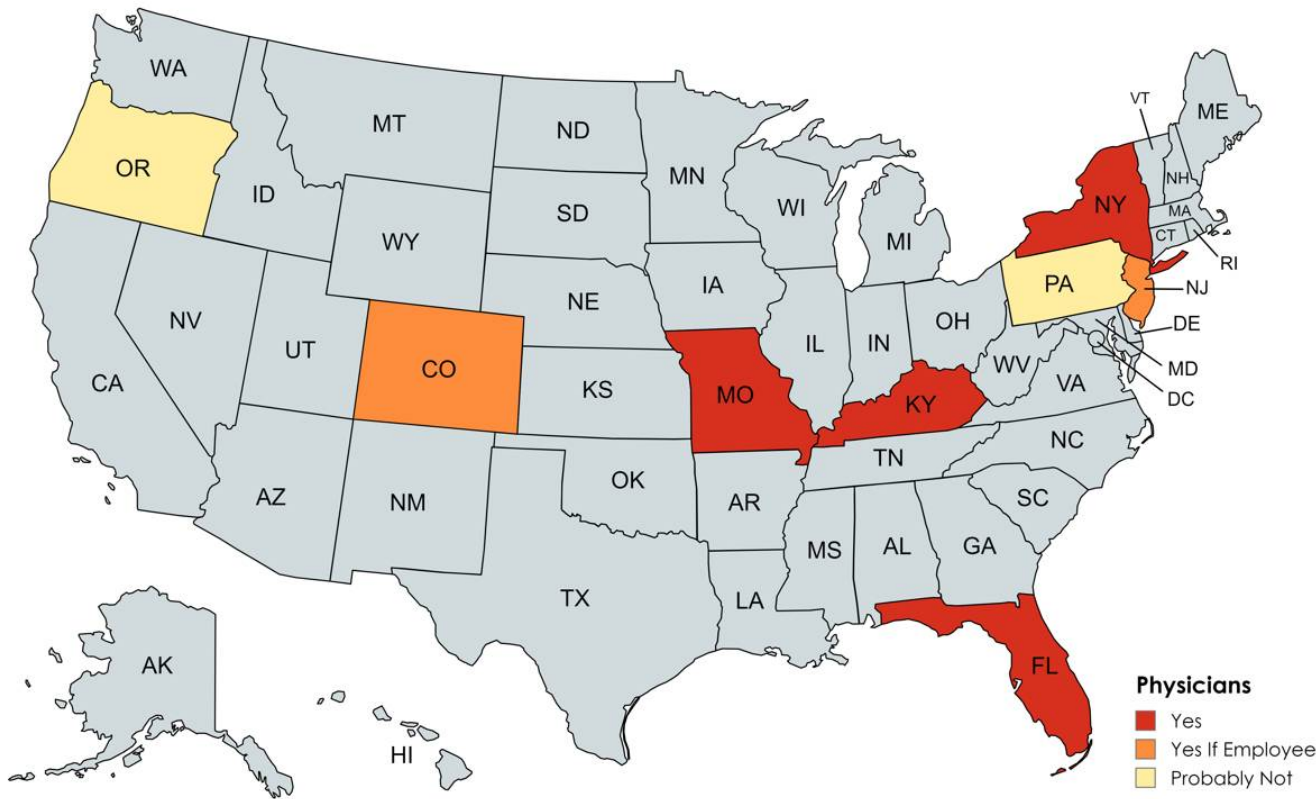
- Once every calendar quarter.

| Colorado | |
|---|--|
| Supplemental Health-care Staffing Agencies Law | |
| The Colorado Supplemental Health-care Staffing Agencies Law ("Law") was enacted in 2022 and amended in 2023. | |
| Potential Application to Locum Tenens Agencies | |
| The Law generally would apply to locum tenens agencies that <i>employ</i> health-care workers (broadly defined) for temporary placement in a health-care facility. The Law does not appear to apply to agencies with only independent contractor relationships, <i>provided that</i> the workers are properly classified as independent contractors. ¹ | |
| Supplemental Health-care Staffing Agency | "Supplemental health-care staffing agency" or "staffing agency" means an individual or type of organization, including any partnership, limited liability partnership, limited liability company, limited liability partnership, association, trust, joint stock company, insurance company, or corporation, whether domestic or foreign, engaged in the business of providing health-care workers who are employees of the staffing agency, and, for a fee, assigning them to temporary placements in health-care facilities. |
| Exclusions | The term does not include: (1) an individual acting as an independent contractor who is only engaged in providing the individual's services on a temporary basis to health-care facilities; (2) a health-care worker platform. |
| Other Key Definitions | |
| Department | "Department" means the Colorado Department of Labor and Employment. |
| Health-care Facility | "Health-care facility" means a facility licensed by the department of public health and environment pursuant to section 25-1.5-103(1)(a) [listing a broad range of types of facilities including hospitals, psychiatric hospitals, community clinics, convalescent centers, nursing care facilities, hospice care, assisted living residences, and ambulatory surgical centers]. |
| Health-care Worker | "Health-care worker" means a person employed by a supplemental health-care staffing agency for temporary placement in a health-care facility. |
| Health-care Worker Platform | "Health-care worker platform" means any person, firm, corporation, partnership, or association that maintains a system or technology that provides a media or internet platform for a health-care worker to be listed and identified as available for hire by health-care facilities seeking health-care workers. Under a platform, the health-care facility sets the hourly rates and other terms of hire and the health-care worker, as an independent contractor and not as an employee or agent of the entity that maintains the platform, decides whether to agree to the hourly rates and other terms of hire. |

What State Laws Apply?

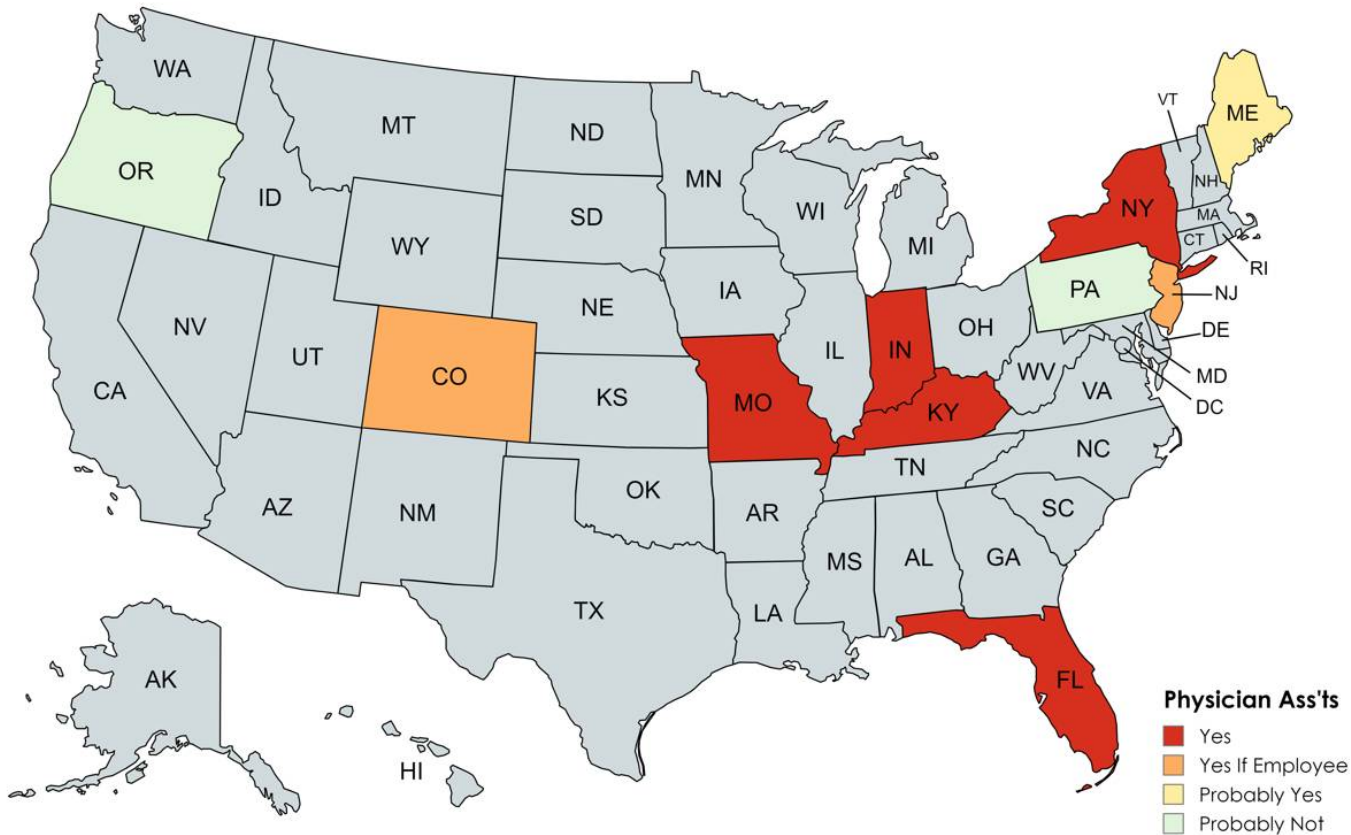


Application of State Laws – Physicians



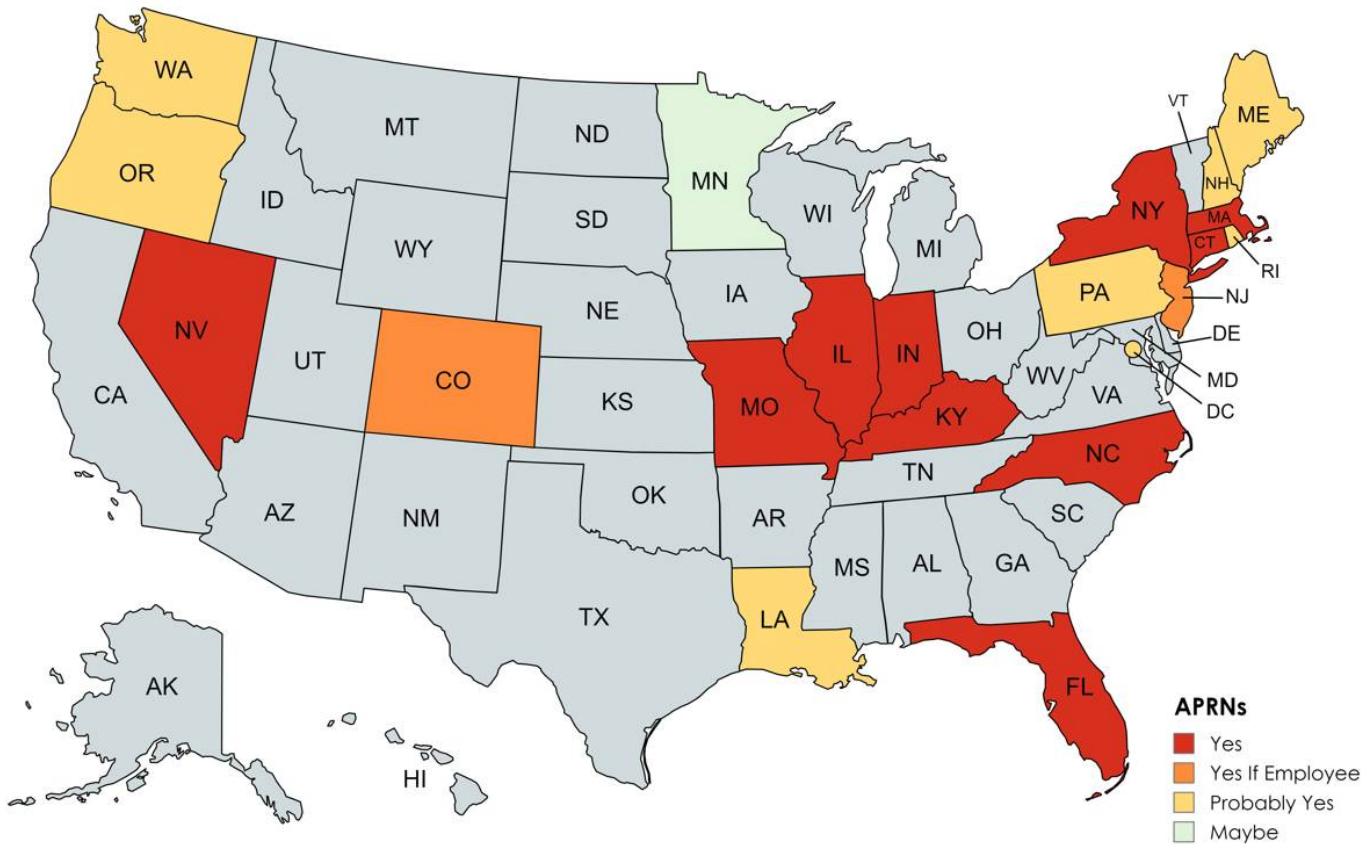
- Application may depend on type of facility
- CO and NJ – worker classification matters but must be correct
- OR and PA – definitions unclear, but probably do not encompass physicians

Application of State Laws – PAs



- Application may depend on type of facility
- CO and NJ – worker classification matters but must be correct
- ME – proposed regulations do not exclude PAs
- OR and PA – definitions unclear but probably do not include PAs.

Application of State Laws – APRNs



- Application may depend on type of facility
- Must carefully parse wording of the law and any regulations

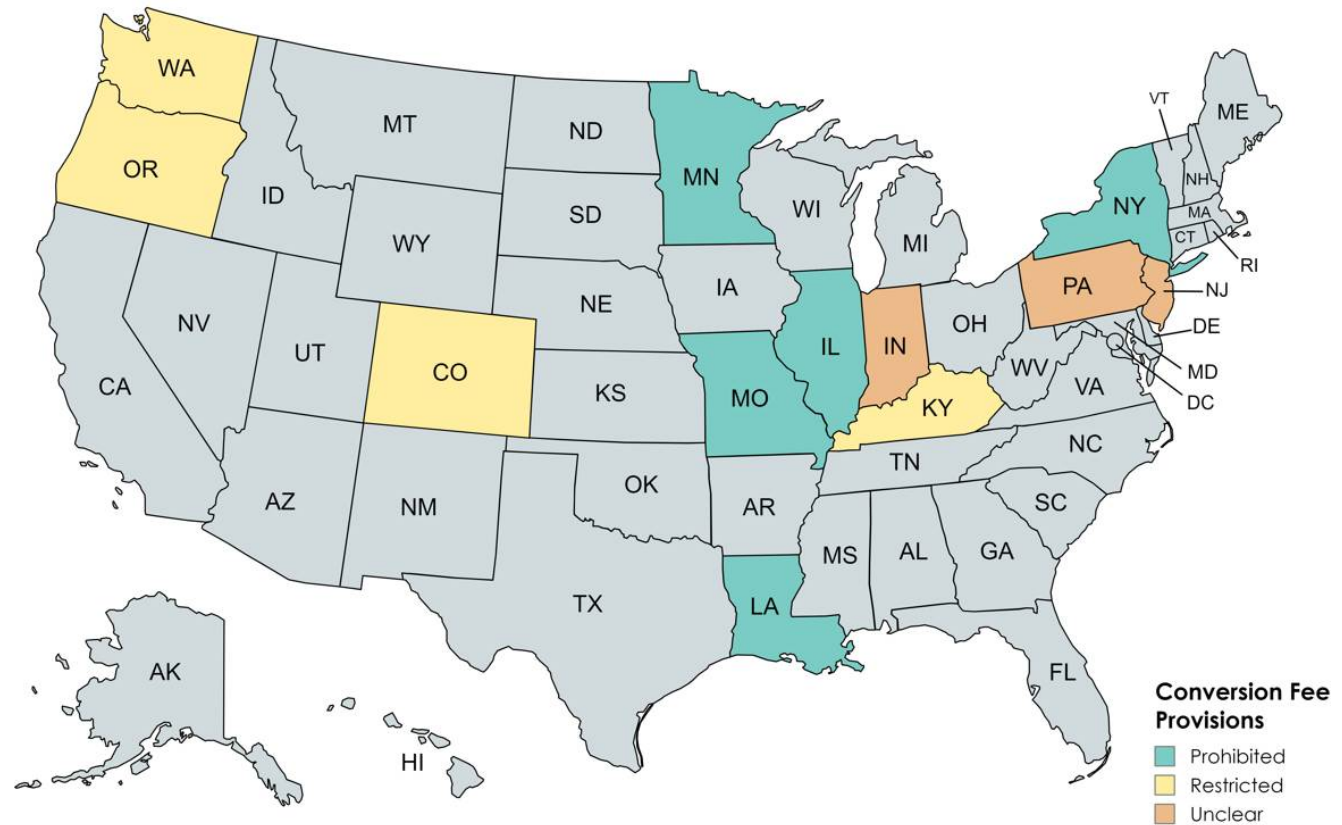
Consequences



akerman

Conversion Fees

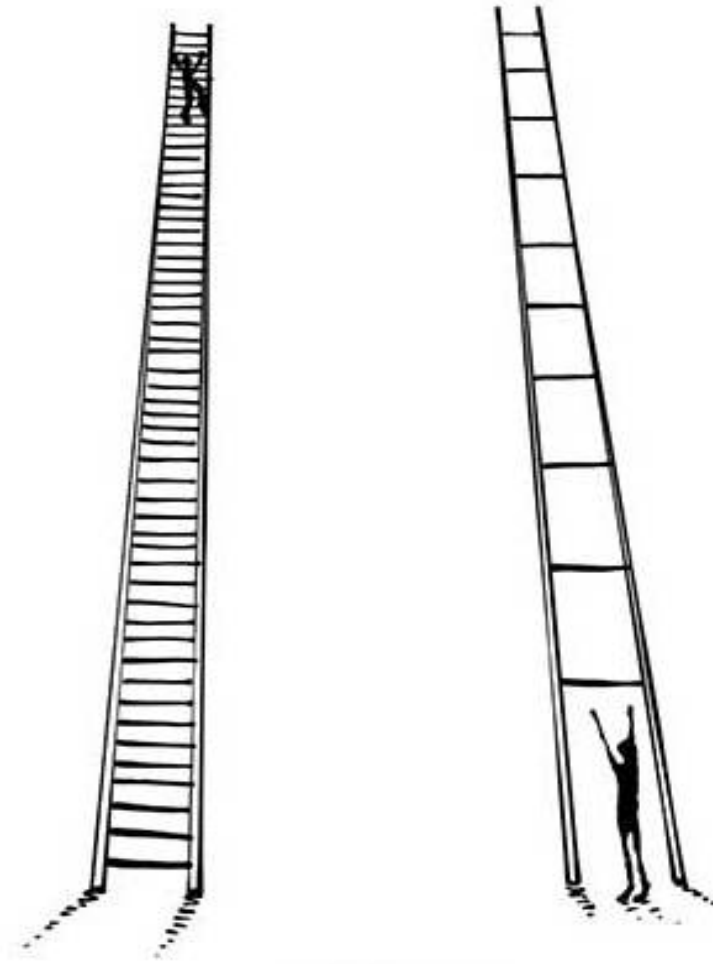
Some of the state health care staffing laws either prohibit or restrict conversion fees for placements to which the relevant law applies.



Legal Risks of Noncompliance

- Criminal penalties (Illinois, Louisiana, Nevada, Washington).
- Loss of registration/license (most states).
- Civil penalties/fines (most states).
- Injunctive relief by regulatory agency (many states).
- Private right of action (e.g., Colorado and Connecticut).
- Another (non-legal) consideration: potential loss of business.

Steps Toward Compliance



Questions?



akerman