

State Health Care Staffing Law Update

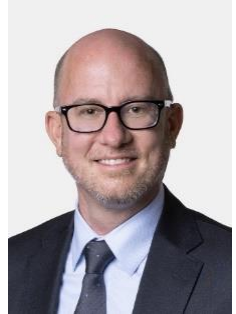
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Akerman Staffing Law Sector Team

Integrated Legal Services for Staffing Companies

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



Antitrust Reminders

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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

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Terminology – Locum Tenens

For our purposes today, we will focus on:

- 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.

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)

NALTO Guide

What is it?

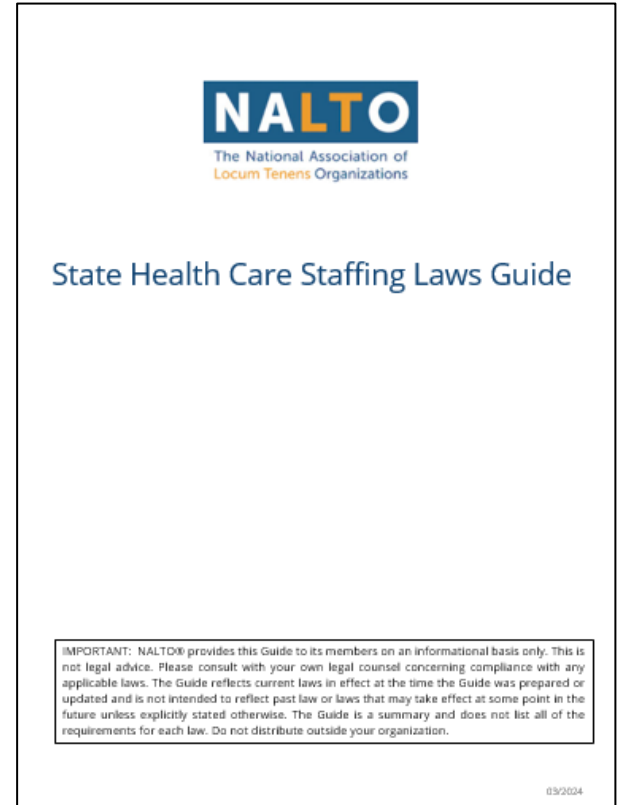
- Booklet with overview of 27 current state health care staffing laws and their potential application to locum tenens agencies.

Where is it?

- Available if you are logged in to your NALTO member account.

How often is it updated?

- Once every calendar quarter.



New Developments



Kansas

Kansas HB 2551 – omnibus budget appropriations bill passed in late May.

Requires registration and quarterly reporting by “supplemental healthcare services agencies.”

- Registration began July 1, 2024.
- First reports due the first week of October (no guidance yet).

Department for Aging and Disability Services appears (?) to be interpreting the law narrowly – registration form refers only to RNs, LPNs, nurse aides, & medication aides. APRNs are open question.

Delaware

Delaware SB 150 – Limited scope law requiring certain training of temporary workers who:

- Are placed at an assisted living facility in Delaware; and
- Will provide care to facility residents who are receiving dementia care.

Training must be approved by the Department of Health and Social Services.

More guidance is expected. Law effective August 1, 2024, but training requirement not applicable until 180 days after Department's implementation.

Delaware

Delaware HB 204 – Law passed by Legislature in late June; awaiting signature by Governor. If enacted, requires “temporary staffing agency” to:

- Register annually
- Submit annual report (number of “employees” placed, settings, duration, amounts charged, documentation of credentials and background checks)
- Ensure that “each employee” assigned or referred by the agency meets qualifications and has experience

Defines “temporary staffing agency” as “a business entity or subdivision that provides temporary staff to a long-term care facility within this State.”

Iowa

Iowa HF 2698 – appropriations bill for health and human services – made some changes to Iowa’s existing law regulating “health care employment agencies”

Iowa’s law generally inapplicable to locum tenens agencies because it is limited to “nursing services” and there is an express carve-out for APRNs.

Changes separately define and regulate “health care technology platforms.”

Minnesota

Minnesota HF 5247 – omnibus appropriations bill – made some changes to Minnesota’s existing law regulating “supplemental nursing services agencies”s

Most significant changes were new civil fines of up to \$3,000 if an agency violates: the credentialing verification requirement; or the prohibitions on noncompetes and conversion fees.

Oregon

Under Oregon's temporary health care staffing agency law, the Oregon Health Authority has been engaged in a process to establish maximum rates for RNs, LPNs, CNAs, CMAs, and direct caregivers in certain settings.

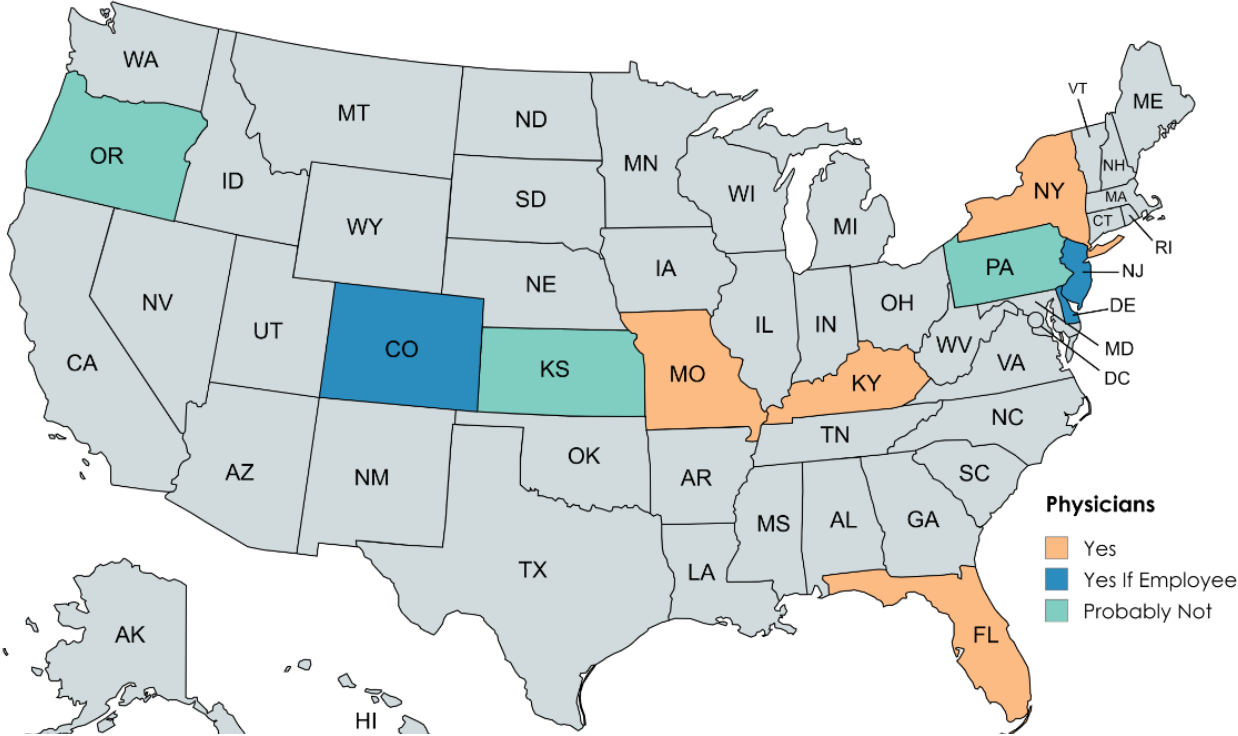
- Rates do not appear to apply to APRNs; definitely do not apply to physicians and PAs.
- Draft proposed regulations posted.
- Max rates to take effect January 1, 2025.
- Max rates reviewed annually.

More info at: <https://www.oregon.gov/oha/hpa/hp-pco/pages/rate-setting.aspx>

What State Laws Apply?

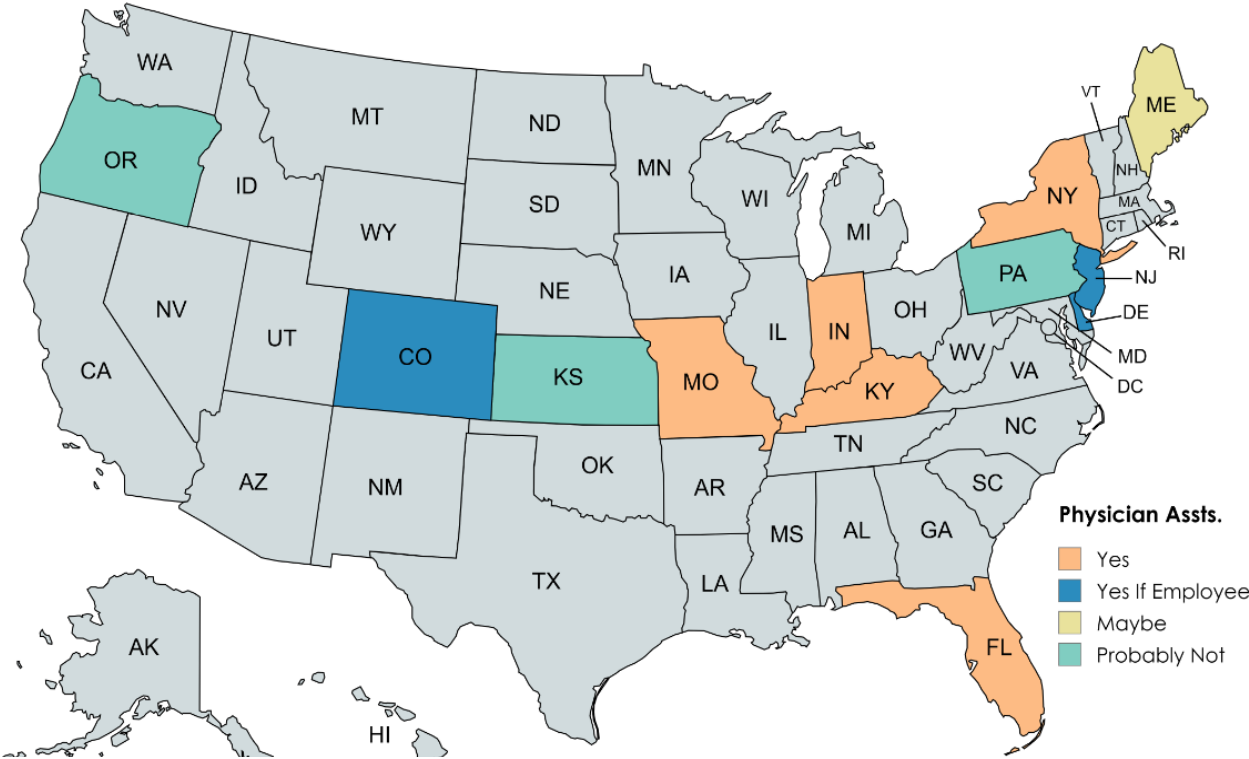


Application of State Laws – Physicians



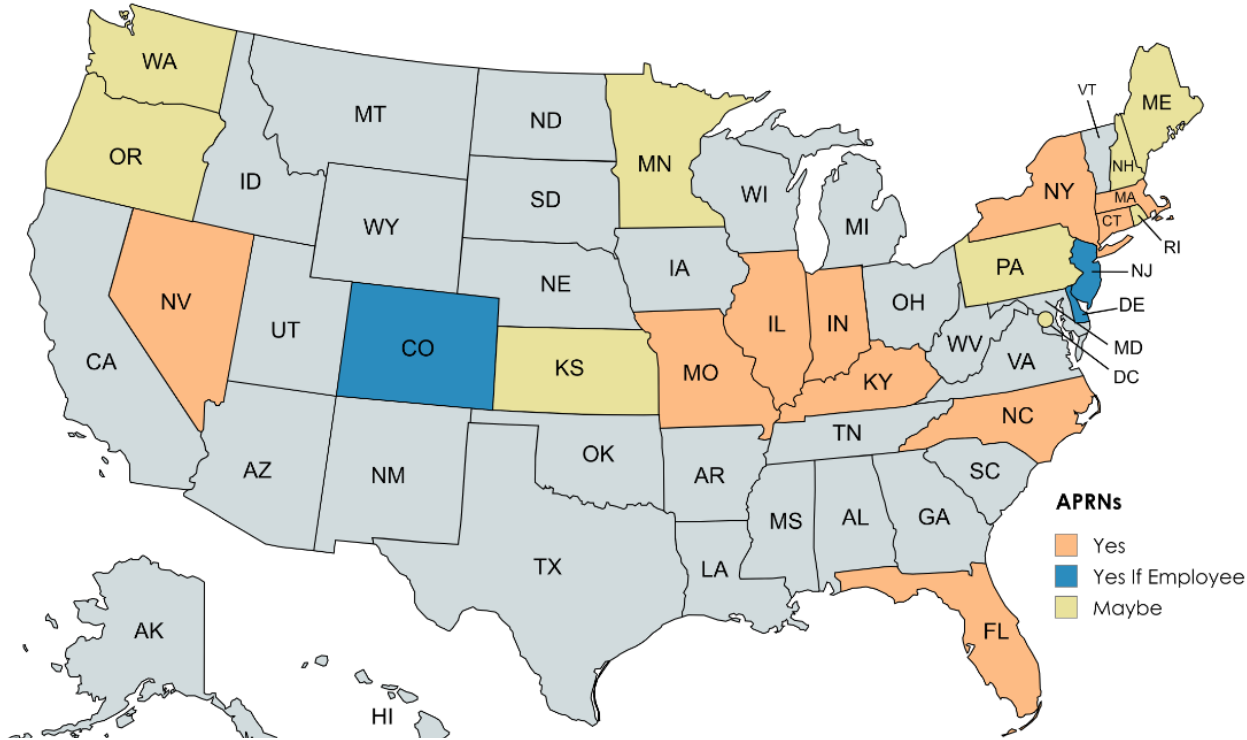
Application may depend on type of facility.

Application of State Laws – PAs



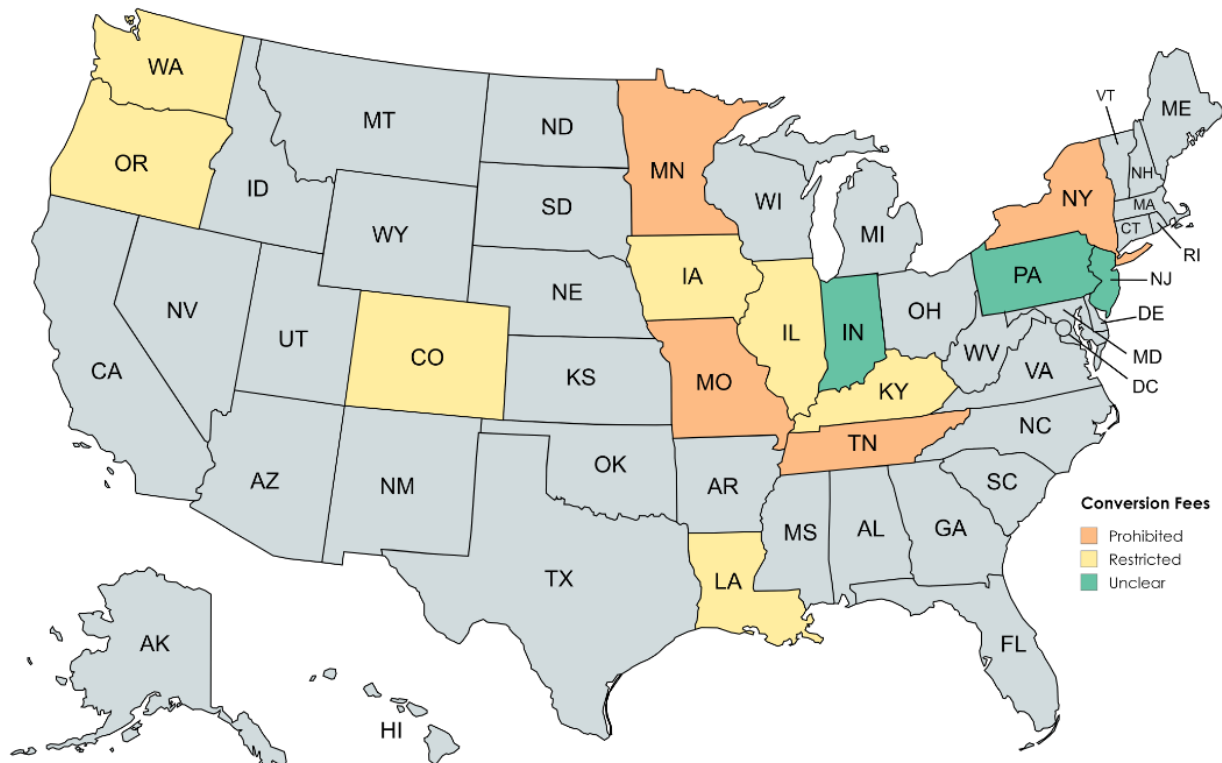
Application may depend on type of facility.

Application of State Laws – APRNs



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

Conversion Fees



Some state health care staffing laws prohibit or restrict conversion fees for placements to which the relevant law applies. Some of these laws may not apply to locum tenens agencies (e.g., IA, LA, TN).

What To Do?



NALTO Advocacy

Louisiana – obtained clarification that Department not interpreting the law to apply to APRNs

New York – working on the Department’s overly broad interpretation of “direct care worker”

Compliance Basics

Conduct a compliance review of states where you are doing business.

Make any necessary adjustments re licensure/registration, contracts with clients/workers, reporting to regulators, other operational practices.

Before starting to conduct business in any new state, review its requirements to determine whether you can comply and, if so, whether you want to do business there in light of the applicable requirements.

California Is a Special Place



Arbitration Agreements



Employers can require their employees to enter arbitration agreements as a condition of new or continued employment (including agreements with class and collective action waivers).

A note of caution: defendants involved in pending class action lawsuits must: (1) disclose the existence of that lawsuit in their arbitration agreement; and (2) permit the employee to exclude the lawsuit from the agreement's scope.

“New” PAGA



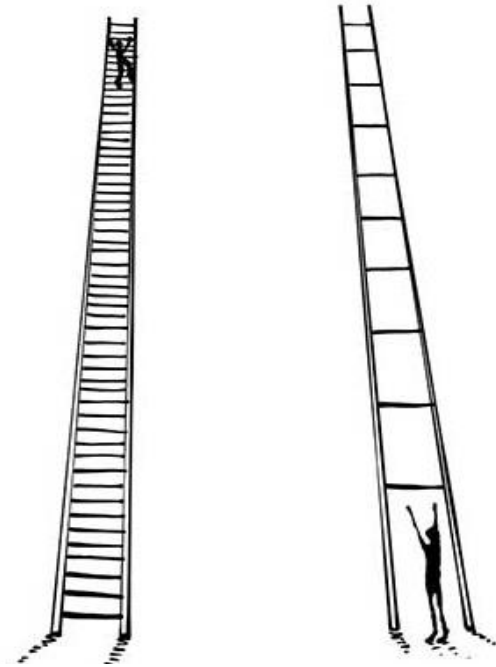
A quick introduction...

- PAGA is a California law that permits an “aggrieved employee” to file a lawsuit against their employer, and seek the recovery of “civil penalties” for Labor Code violations on behalf of themselves and all other non-exempt employees.
- PAGA penalties vary, but are typically set at a maximum \$100 per pay period, with some caveats. For companies that pay weekly, the “new” PAGA cuts the penalties in half. This is great news for staffing companies in California.
- PAGA penalties accrue on a per-employee, per-pay period basis.
- Also, the “new” PAGA caps penalties at either 15% or 30% of the maximum for employers who take “reasonable steps” to comply with the Labor Code. This significant reduction provides a huge incentive for staffing companies to adopt best practices now.

So How Does an Employer Avoid a PAGA Claim?

- Given (1) the complexities in the Labor Code, (2) the fact that even innocent mistakes may violate the Labor Code, and (3) the “supervisory distance” between a staffing company employer and its workforce, complete claim avoidance may not be possible.
- However, tightening compliance with the Labor Code to avoid common mistakes in timekeeping, payroll, and related areas will reduce the likelihood that a claim is filed. And if a claim is filed, tightening compliance will both reduce the number of Labor Code violations and reduce the amount of the penalties that can be recovered.
- Note, though, that even the most sophisticated companies are regularly sued for PAGA violations, and the cost of defense sometimes makes informal resolution through settlement the most economically sensible strategy.

Steps Toward Compliance



Questions?