



# Half an Hour for Health Care

## *Part 2: Flexible Staffing*

April 10, 2025

**Seyfarth Shaw LLP**

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).  
©2025 Seyfarth Shaw LLP. All rights reserved. Private and Confidential



## Legal Disclaimer

This presentation has been prepared by Seyfarth Shaw LLP for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

### **Seyfarth Shaw LLP**

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).  
2025 Seyfarth Shaw LLP. All rights reserved. Private and Confidential

# Speakers

---



**Bailey Bifoss**  
Partner  
San Francisco



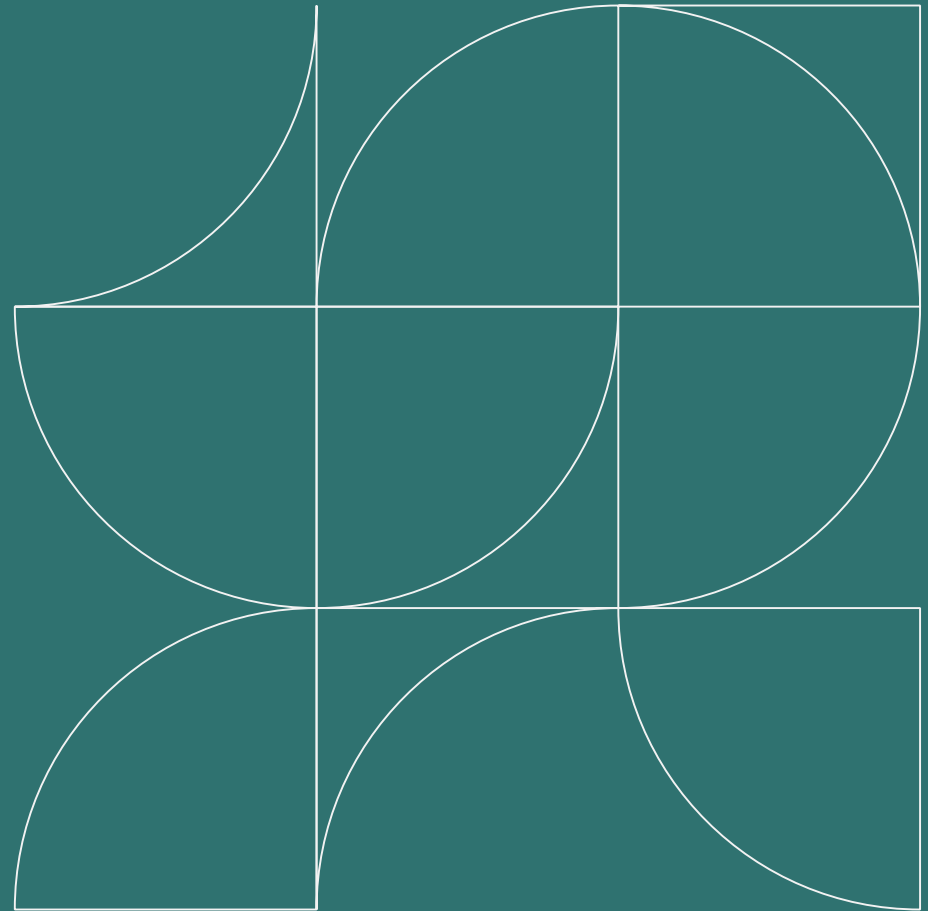
**Ashley Stein**  
Associate  
Los Angeles



## Agenda

- 1 Joint Employment Considerations in Flexible Staffing Models
- 2 Common Wage and Hour Issues Under Flexible Staffing Models
- 3 Defensive Litigation Strategies with Flexible Staffing Partners

# Flexible Staffing – The Future of Healthcare?



## **Basics of Flexible Staffing Models**

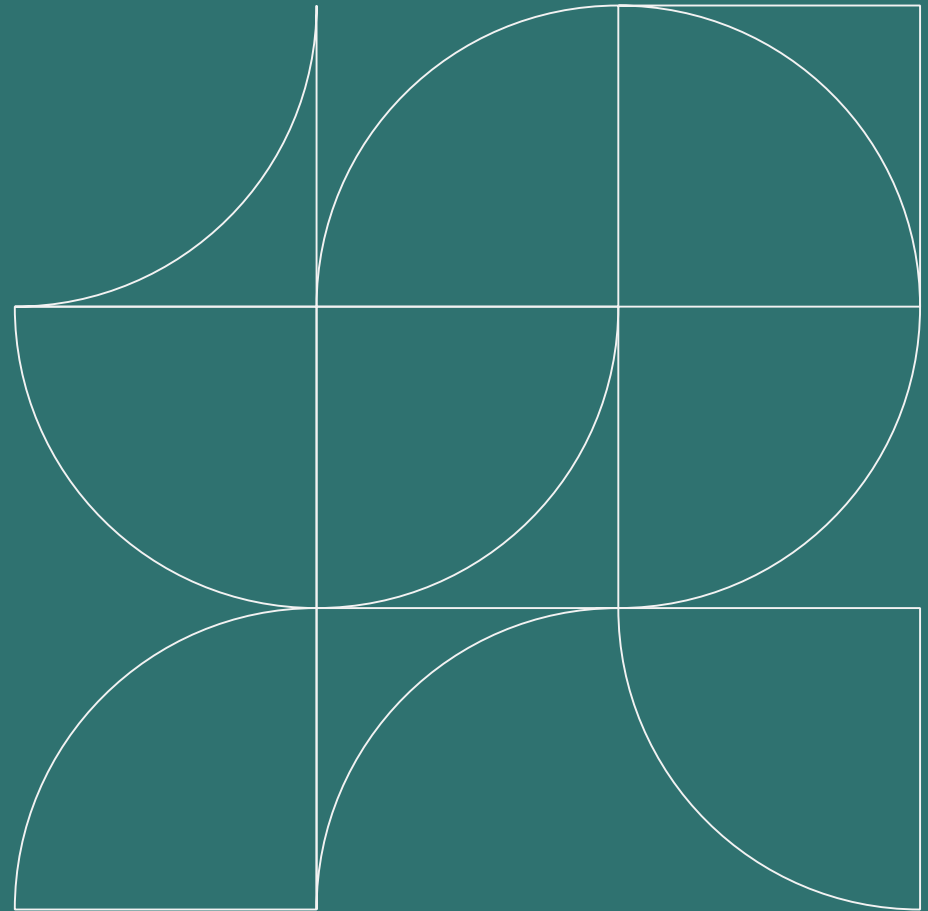
- **Examples of Flexible Staffing**
  - Travel nurses
  - Per Diems
  - Internal flex or float pools
  - Temporary employees
- **Services provided via flexible staffing:**
  - Nurses (most common)
  - Ancillary services, such as janitorial and food service personnel

- **Benefits of flexible staffing**

- Increase headcount quickly without ongoing employee costs
- Address unexpected surges in census, patient needs
- Bring in personnel with specialized skills to address gaps or unusual patient needs
- Avoid overloading employees, enhance patient care, and prevent burnout

## **Basics of Flexible Staffing Models**

# Joint Employment Considerations in Flexible Staffing Models



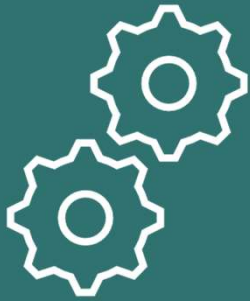
# Joint Employer Considerations



## Are you a joint employer of personnel provided under flexible staffing models?

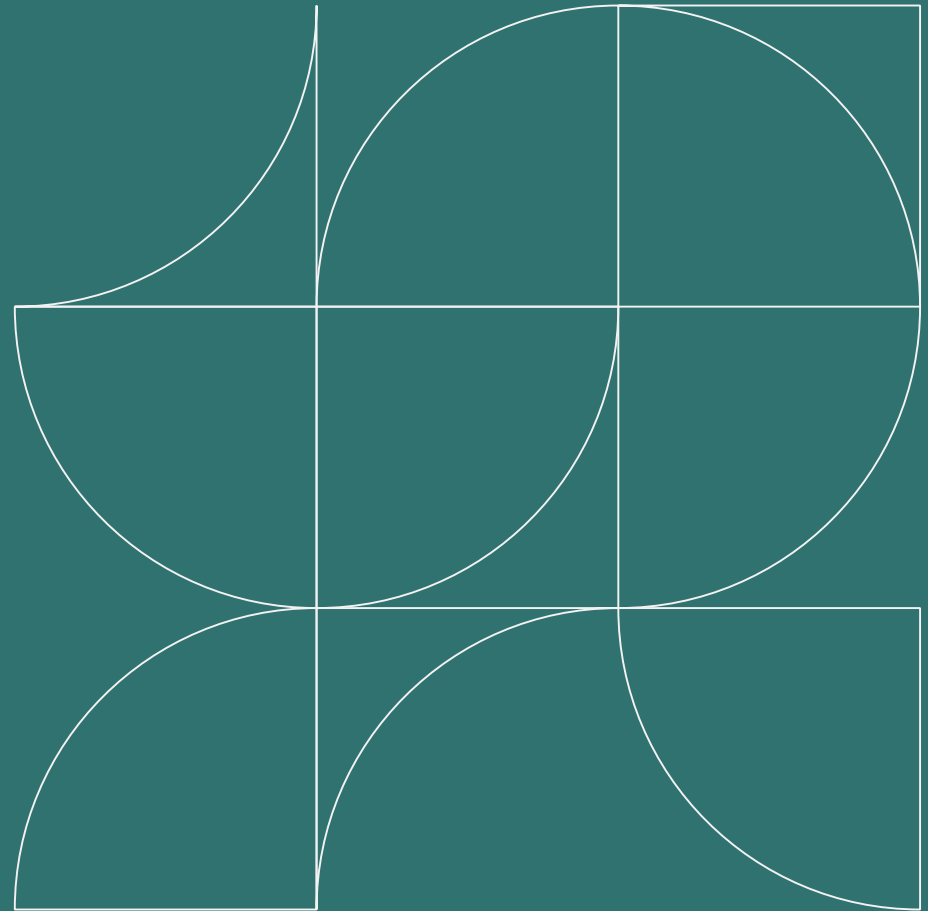
1. Under common law (*Martinez*):
  - To engage
  - To suffer/permit to work
  - To exercise control over wages/hours/working conditions
2. Under California Labor Code § 2810.3
3. Under the California Fair Employment and Housing Act (*Jimenez*)
4. Under California's independent contractor laws (*Dynamex*)

# Joint Employer Considerations



1. Hiring and onboarding
2. Training (initial and ongoing)
3. Applicable policies and procedures
4. Arbitration Agreements
5. Day-to-day management
6. Management of Performance Issues
7. Handling of Complaints
8. Recordkeeping

# Common Wage and Hour Issues Under Flexible Staffing Models



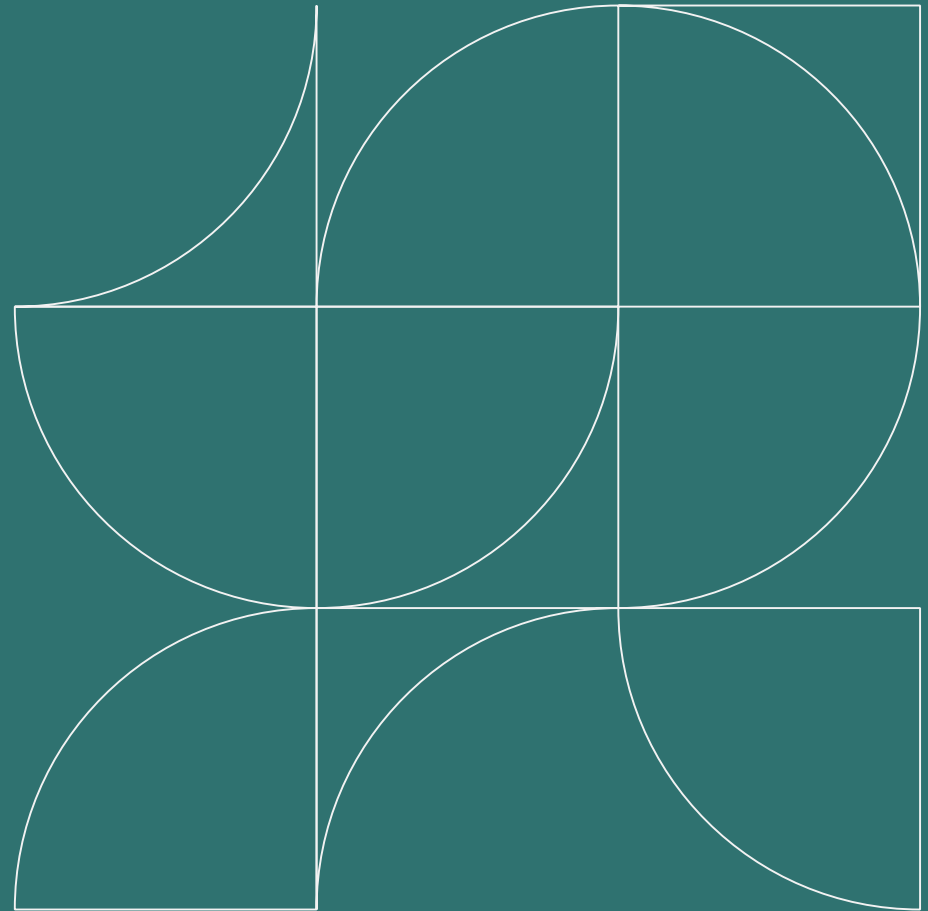
## **Common Wage and Hour Issues in Flexible Staffing Arrangements**

- **Timekeeping**
  - How are flexible personnel tracking their time?
- **Scheduling**
  - How are flexible personnel being scheduled?
- **Payment of wages**
  - How (and when, and how often) are flexible personnel being paid?

- **Meal periods and rest breaks**
  - Policy for providing flexible staff with meal and rest breaks
  - Are these being tracked?
- **Business expenses**
  - Would flexible staff incur any expenses?
  - Who reimburses for these expenses?

## **Common Wage and Hour Issues in Flexible Staffing Arrangements**

# Defensive Litigation Strategies With Flexible Staffing Partners



# Considerations for Defensive Litigation Strategies

---

## Arbitration Agreements

- Which entity provides the agreement?
- Key language:
  - Class waiver
  - Intended third party beneficiary

## Drafting contract with provider of third-party staff

- Responsibilities of the third-party provider vs. the hospital's responsibilities as to flexible staff
- Indemnification provisions

# Considerations for Defensive Litigation Strategies



- **Drafting contract with provider of third-party staff**
  - Responsibilities of the third-party provider vs. the hospital's responsibilities as to flexible staff
  - Indemnification provisions



SCAN ME

## CLE ATTENDANCE VERIFICATION FORM

Please scan the QR code to complete the digital attendance verification form to receive CLE credit for this program.

QR code directs you to our electronic form which can also be found in the calendar invite that was sent to you for this program.

### You will need:

1. **Title:** Half an Hour for Health Care, Part 2 – Flexible Staffing
2. **Date Viewed:** 4/10/2025
3. **Attendance Verification Code:** SS3805

State-specific CLE credit information can be found in the form.

# thank you

**For more information please contact:**

**Bailey Bifoss**

Email: [bbifoss@seyfarth.com](mailto:bbifoss@seyfarth.com)

Phone: (415) 544-1050

**Ashley Stein**

Email: [astein@seyfarth.com](mailto:astein@seyfarth.com)

Phone: (310) 201-9302