OSHA Temporary Worker Initiative – Do you know your responsibilities?
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Agenda

• Overview of the OSHA TWI (Temporary Worker Initiative)
• Host Employer Responsibilities
• Staffing Company Responsibilities
• Resources
OSHA Emphasis Program for Temporary Workers

On April 29, 2013, OSHA issued the memorandum titled, Protecting the Safety and Health of Temporary Workers.

• Within the scope of OSHA inspections, they determine whether:
  – any employees are temporary workers
  – any of the identified temporary workers are exposed to unsafe condition(s);

• Assess, using records review and interviews, whether those workers have in fact received required training in a language and vocabulary they understand;

• Document the name of the temporary worker's staffing agency, the agency's location, and the supervising structure under which the temporary workers are reporting (i.e. day-to-day supervision by either by the host employer or the staffing agency)
Employers may use temporary workers as a way to avoid meeting all their compliance obligations under the OSHA and other worker protection laws.

Temporary workers get placed in a variety of jobs including the most hazardous jobs positions.

Temporary workers are more vulnerable to workplace safety, health hazards, and retaliation than workers in traditional employment relationships.

Temporary workers are often not given adequate safety and health training or explanations of their duties by either the temporary staffing agency or the host employer.

Concerns Leading to Program Development

OSHA Emphasis Program

Joint Employer Contract Responsibilities (1 of 2)

Ensure that there is a clear understanding of each employer's role in protecting employees in agreements.

Set out respective responsibilities for compliance with applicable OSHA standards.

Include terms that will ensure that each employer complies with all relevant regulatory requirements, thereby avoiding confusion as to the employer's obligations.

Define scope of temporary work.
Both the host and temporary employers are responsible for condition(s) in the workplace including the provision of adequate training.

Temporary staffing agencies and host employers share control over the worker and are therefore are jointly responsible for temporary workers' safety and health.

The question is, which employer is responsible for what?
Host Employer Responsibilities

Maintaining a Safe Work Environment

- On-going Evaluation of the Workplace
  - Conducting ongoing, documented hazard assessments of the workplace
  - Before accepting temporary workers on site, the staffing agency should be made aware of the relevant hazards existing at the host worksite
Host Employer Responsibilities

Scope of Duties

- What is the scope of work to be performed by the temporary employees? Detailed job description & physical demands.
- What skills are needed to perform the job safely?
- Identify tasks out of scope for temporary workers, if any
- A clear definition of the worker job duties, allows for qualified job placement and identifies needed training

Host Employer Responsibilities

Staffing Company Selection

- How long in business?
- Experience in your industry?
- Formal employee selection process?
- Proactive in safety?
Host Employer Responsibilities
Training

- In most cases, the host employer shoulders the responsibility of worksite specific training. This would include but not be limited to:

  - Hazard Communication/GHS
  - Lockout-Tagout
  - Machine Guarding
  - Forklift or other PIT training
  - Ergonomics - Safe Material Handling
  - Personal Protective Equipment
  - Emergency Evacuation

Host Employer Responsibilities
OSHA Recordkeeping

Injury and illness tracking (OSHA 300 logs):

- Who is the supervising employer?
  - Defined as controlling the means and manner of the temporary employees work
  - In most cases, this will be the host employer

- Best method is to specify within the contract / safety agreement

- Staffing companies will still be responsible for maintaining OSHA 300 logs for their staff employees
Staffing Company Responsibilities

Client Selection

- Search for OSHA inspection documentation and violations
- Review the clients safety or injury and illness prevention program
- Visit the client’s site and perform a documented safety assessment
- Match the employees knowledge, experience, and qualifications to the job demands – Get detailed job duty information ahead of time
Staffing Company Responsibilities

Employee Selection

- The selection of employees is as important as the selection of clients and a critical component of your Risk Management program.
- All staffing companies should prequalify employees by obtaining:
  - Formal Applications
  - Reference checks
  - Work History
  - Drug tests

Staffing Employee Selection

Application

- All prospective employees should be required to complete a formal application for employment.
- References from prior employers and personal references should be obtained and verified.
- Determine what the employee is capable of doing from a physical standpoint.
- Sign off for permission to conduct drug tests and background checks.
Staffing Employee Selection

Interview

- A face to face interview is an important component of selection of employees
- A review of all previous jobs and information on why they left the position
- Recruiters should be trained on interview techniques and what is considered a viable employee from the staffing company prospective

Staffing Employee Selection

Drug Testing

There should be a written drug and alcohol program and policy in place. The policy should contain at a minimum:

- A statement that drugs and alcohol testing is required and that you conduct this testing
- When testing will occur, at time of hire, (post injury if drugs may have played a role), and for cause
- A sign off from the employee that they understand the policy
- A qualified third party lab used to determine results of all testing
OSHA’s Recordkeeping Rule Interpretation Memo

OSHA’s Recordkeeping Rule Interpretation Memo – Drug Testing

(2 of 2)

B. Drug and Alcohol Testing

Section 1904.20(b)(1)(v) does not prohibit employers from drug testing employees who report work-related injuries or illnesses as long as they have an objectively reasonable basis for testing, and the rule does not apply to drug testing employees for reasons other than injury-reporting. However, OSHA will not issue citations under section 1904.20(b)(1)(v) for drug testing conducted under a state workers’ compensation law or other state or federal law. Drug testing under state or federal law does not violate section 1904.20(b)(1)(v). See sections 4921(x) and 4921(y) of the OSHA Act, 29 U.S.C. §§ 5321(x) and 5321(y). Section 1904.20(b)(1)(v) only prohibits drug testing employees for reporting work-related injuries or illnesses without an objectively reasonable basis for doing so. And, as in all cases under section 1904.20(b)(1)(v), OSHA will need to establish that the elements of retaliation to prove a violation: a protected report of an injury or illness, adverse action, and causation.

When evaluating whether an employer had a reasonable basis for drug testing an employee who reported a work-related injury or illness, the central issue will be whether the employer had a reasonable basis for believing that drug use by the reporting employee could have contributed to the injury or illness. If so, it would be objectively reasonable to subject the employee to a drug test. When OSHA evaluates the reasonableness of drug testing a particular employee who has reported a work-related injury or illness, it will consider factors indicating whether the employer had a reasonable basis for concluding that drug use could have contributed to the injury or illness (and therefore the result of the drug test could provide insight into why the injury or illness occurred), whether other employees involved in the incident that caused the injury or illness were also tested or whether the employee tested had been exposed to possible drug use, and whether the employer had a heightened interest in determining if drug use could have contributed to the injury or illness due to the hazardousness of the work being performed when the injury or illness occurred. OSHA will consider whether the drug test is capable of measuring impairment at the time the injury or illness occurred where such a test is available. Therefore, at this time, OSHA will consider this factor for tests that measure alcohol use, but not for tests that measure the use of any other drugs. The general principle here is that drug testing may not be used by the employer as a form of discipline against employees who report an injury or illness, but may be used as a tool to evaluate the root causes of workplace injuries and illnesses in appropriate circumstances.

Consider the example of a crane accident that injures several employees working nearby but not the operator. The employer does not know the causes of the accident, but there is a reasonable possibility that it could have been caused by operator error or by mistakes made by other employees responsible for ensuring that the crane was in safe working condition. In this scenario, it would be reasonable to require all employees whose conduct could have contributed to the accident to take a drug test, whether or not they reported an injury or illness. Testing would be appropriate in these circumstances because there is a reasonable possibility that the results of drug testing could provide the employer insight on the root cause of the incident. However, if the employer only tested the injured employee but did not test the operator and other employees whose conduct could have contributed to the accident, such disproportionate testing of reporting employees would likely violate section 1904.20(b)(1)(v).

Furthermore, drug testing an employee whose injury could not possibly have been caused by drug use would likely violate section 1904.20(b)(1)(v). For example, drug testing an employee for reporting a repetitive strain injury or stress would not be objectively reasonable because drug use could not have contributed to the injury. And, section 1904.20(b)(1)(v) prohibits employees from administering a drug test in an unnecessarily punitive manner regardless of whether the employer had a reasonable basis for requiring the test.
A staffing company does not have to nor should they feel they have to hire every person who applies.

If a client calls for employees, you should follow a specific procedure and not just send the first available person.

If a prospective employee has not worked for you in several months a new application should be submitted along with a new drug test.

As with client selection there are some concerns that should be addressed when selecting employees, some of these include:

- The person who has been let go from their last several jobs and always has the excuse that it was not their fault and someone else was to blame.

- People who believe that they are entitled to a job, but do not want to put any effort into it.

- The person who has left all previous jobs because he is worth more than he was being paid and left with no other job prospect.
Staffing Employee Selection
Red Flags when selecting employees (2 of 2)

- Inconsistencies in answers from the application to what is being said in the interview
- The people who have long periods of not working. You need to find out why they were unemployed
- The person who says they want to work and will come for a drug test several days or weeks later

Staffing Company Responsibilities
Training (1 of 2)

- The staffing company will usually only cover general orientation topics such as:
  - General safety - Safety rules and requirements of the staffing company
  - General concepts of lock out tag out, machine guarding, emergency procedures, and hazard communication, etc.
  - Use of Personal Protective Equipment (PPE)
  - Injury reporting and Return-To-Work procedures
  - Other Human Resource topics
Staffing Company Responsibilities
Training (2 of 2)

• Any other jointly agreed to specific delegation of training topics

• Ensure that the employee understands what they have been taught

• Training records should be kept on file with the host employer and the staffing company

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Staffing Company Responsibilities
Workplace Assessment

• Evaluation of Host Employer’s Worksites
  • From OSHA / ASA webinar:
    - Both employers should perform a hazard assessment of the worksite
    - Staffing agencies need not become experts on specific workplace hazards, but should determine:
      ➢ What conditions exist at their client (host) worksite
      ➢ What hazards may be encountered
      ➢ How best to ensure protection for the temporary workers
    - Staffing agencies should visit the worksite, request and review the host employer’s hazard assessment, and review recordable injuries and illnesses at the prospective worksite
Resources

Occupational Safety & Health Administration

- [https://www.osha.gov/temp_workers/](https://www.osha.gov/temp_workers/)
- Recommended Practices to Protect Temporary Workers
- TWI Bulletins (7)
  - Recordkeeping Requirements
  - Personal Protective Equipment
  - Protection From Retaliation
  - Safety and Health Training
  - Hazard Communication
  - Bloodborne Pathogens
  - Powered Industrial Trucks
OSHA’s “Recommended Practices to Protect Temporary Workers”

Protecting Temporary Workers

The Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH) are aware of numerous preventable deaths and disabling injuries of temporary workers. One example is the death of a 27-year-old employed through a staffing agency to work as an equipment cleaner at a food manufacturing plant. While cleaning a piece of machinery, he came into contact with rotating parts and was pulled into the machine, sustaining fatal injuries. The manufacturing plant’s procedures for cleaning the equipment were unsafe, including steps in which cleaners worked near the machine while it was energized and parts were moving. Additionally, while the company’s permanent maintenance employees were provided with training on procedures to ensure workers were not exposed to energized equipment during maintenance or cleaning, this training was not provided to cleaners employed through the staffing agency. Source: Massachusetts Fatality
Resources
OSHA's TWI Bulletins (1 of 2)

**Temporary Worker Initiative**

**Injury and Illness Recordkeeping Requirements**

This is the first in a series of guidance documents issued under the Occupational Safety and Health Administration’s (OSHA's) Temporary Worker Initiative (TWI). This Initiative focuses on compliance with safety and health requirements when temporary workers are employed under the joint (or dual) employment of a staffing agency and a host employer.

When a staffing agency supplies temporary workers to a business, typically, the staffing agency and the staffing firm client (also known as the host employer) are joint employers of those workers. See OSHA FAQ 31-1 at www.osha.gov/recordkeeping. (Essentially, an employer is performing day-to-day supervision when that employer controls conditions presenting potential hazards.)

**Hazard Communication**

This is part of a series of guidance documents developed under the Occupational Safety and Health Administration’s (OSHA's) Temporary Worker Initiative (TWI). This Initiative focuses on compliance with safety and health requirements when temporary workers are employed under the joint employment of a staffing agency and a host employer.

Temporary workers are entitled to the same protections under the Occupational Safety and Health Act of 1970 (the OSH Act) as all other covered workers. When a staffing agency supplies temporary workers to a business, typically, the staffing agency and the staffing agency’s client, commonly referred to as the host employer, are joint employers of the temporary workers. Employers must also maintain a written hazard communication program at their facility as required by the HCS, 29 CFR 1910.1200 (e). The written program should include requirements for labels and other forms of warning, safety data sheets (SDSs), and information and training. The HCS applies to any chemical known to be present in the workplace at a level sufficient to create a potential hazard to employee health or safety.
Resources

Additional

National Institute for Occupational Health and Safety
https://blogs.cdc.gov/niosh-science-blog/2015/06/16/temp-workers/

National Safety Council
http://www.nsc.org

Arkansas Department of Labor
“Work Readiness of Temporary Employees” a handbook of best practices and safety guidelines

BLR – Business & Legal Resources – Temp Worker Safety Checklist
http://www.blr.com/Search?q=temporary+worker+safety+checklist

Resources

National Institute for Occupational Health and Safety Blog

Addressing the Hazards of Temporary Employment

A Joint Session of the NORA Manufacturing Sector and Services Sector Councils

Factors such as fluctuations in the economy, changing social norms, and access to technologies have resulted in a rapid growth in temporary work arrangements. In recent years, both temporary and permanent workers in the United States have experienced an increase in the number of temporary employment arrangements. The National Occupational Research Agenda (NORA) The National Occupational Research Agenda (NORA) The National Occupational Research Agenda (NORA) has identified workplace safety and health as one of the top priorities for research and policy development. This session focuses on the role of the NORA manufacturing and services sector councils in addressing these issues.
Resources
Arkansas Department of Labor “Work Readiness of Temporary Employees” best practices

Questions?
Thank you