

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



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)

OSHA Emphasis Program



Concerns Leading to Program Development

- 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

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

OSHA Emphasis Program

Joint Employer Responsibilities (2 of 2)

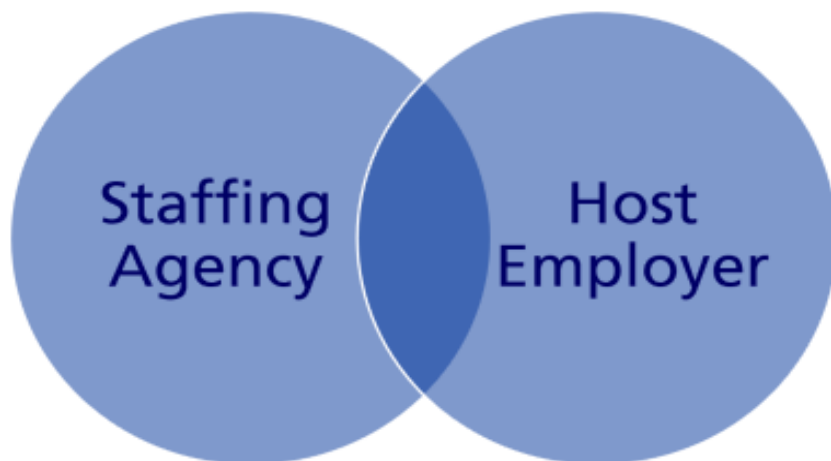


- Both the host and temporary employers are responsible for condition(s) in the workplace including the provision of adequate training
- Temporary staffing agencies and host employers share control over the worker and are therefore jointly responsible for temporary workers' safety and health

The question is, which employer is responsible for what?

OSHA Emphasis Program

Who is Responsible?



Host Employer Responsibilities



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



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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

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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



(1 of 2)

The screenshot shows the OSHA website header with the United States Department of Labor logo and navigation links. The main content area displays a memorandum dated OCT 19 2016, titled 'Interpretation of 1904.35(b)(1)(i) and (iv)'. The memorandum is from Dorothy Doucherty, Deputy Assistant Secretary. The subject is the interpretation of the recordkeeping rule. The text explains that OSHA published a final rule on May 12, 2016, amending 29 C.F.R. 1904.35 to add two new provisions: section 1904.35(b)(1)(i) and section 1904.35(b)(1)(iv). The rule requires employers to have a reasonable procedure for reporting work-related injuries and illnesses. The memorandum explains that the new provisions are intended to clarify the requirements and to ensure that the reporting procedure is not unduly burdensome. It also discusses the consequences of failing to report an injury or illness, including the potential for a citation and penalty. The memorandum concludes by stating that the new provisions are intended to provide a clear and consistent standard for employers to follow.

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OSHA's Recordkeeping Rule Interpretation Memo – Drug Testing



(2 of 2)

B. Drug and Alcohol Testing:⁵

Section 1904.35(b)(1)(iv) does not prohibit employers from drug testing employees who report work-related injuries or illnesses so 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. Moreover, OSHA will not issue citations under section 1904.35(b)(1)(iv) 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 1904.35(b)(1)(iv). See sections 4(b)(1) and 4(b)(4) of the OSH Act, 29 U.S.C. §§ 653(b)(1) & (4). Section 1904.35(b)(1)(iv) 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 1904.35(b)(1)(iv), OSHA will need to establish the three 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 inquiry 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 including 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 employer only tested the employee who reported the injury or illness, and whether the employer has 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 only 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 illness 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 causes of the incident. However, if the employer only tested the injured employees but did not test the operator and other employees whose conduct could have contributed to the incident, such disproportionate testing of reporting employees would likely violate section 1904.35(b)(1)(iv).

Furthermore, drug testing an employee whose injury could not possibly have been caused by drug use would likely violate section 1904.35(b)(1)(iv). For example, drug testing an employee for reporting a repetitive strain injury would likely not be objectively reasonable because drug use could not have contributed to the injury. And, section 1904.35(b)(1)(iv) prohibits employers from administering a drug test in an unnecessarily punitive manner regardless of whether the employer had a reasonable basis for requiring the test.

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Staffing Employee Selection

General Information



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

Staffing Employee Selection

Red Flags when selecting employees (1 of 2)



- 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

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



Resources

Occupational Safety & Health Administration

- 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

Resources

OSHA Temporary Workers Webpage https://www.osha.gov/temp_workers



Occupational Safety and Health Administration

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Protecting Temporary Workers

"Host employers need to treat temporary workers as they treat existing employees. Temporary staffing agencies and host employers share control over the employee, and are therefore jointly responsible for temp employee's safety and health. It is essential that *both* employers comply with all relevant OSHA requirements."

— David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health

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Employer Responsibilities to Protect Temporary Workers*

To ensure that there is a clear understanding of each employer's role in protecting employees, OSHA recommends that the temporary staffing agency and the host employer set out their respective responsibilities for compliance with applicable OSHA standards in their contract. Including such terms in a contract will ensure that each employer complies with all relevant regulatory



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Resources

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

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Resources OSHA's TWI Bulletins (1 of 2)



TWI BULLETIN NO. 1



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**.

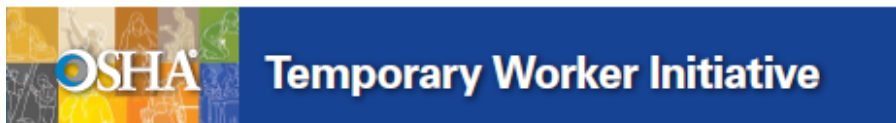
When a staffing agency supplies temporary workers to a business, typically, the staffing agency and the staffing firm client (also known as the **host employer**) are joint employers of those workers.

be accomplished." 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

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Resources OSHA's TWI Bulletins (1 of 2)



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

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

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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
<http://www.labor.arkansas.gov/Websites/labor/images/TemporaryEmployeesBooklet.pdf>

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



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Addressing the Hazards of Temporary Employment

Posted on June 16, 2015 by Cheryl F. Estill, Thais Morata, Terri Schorr, Barbara Materna



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

Factors such as fluctuations in the economy, changing social habits and access to technology have boosted a rapid growth in temporary work arrangements [Luo, T]. Under many names—temporary workers, contingent workers, contract workers, long-term temps, workers in dual employer situations, on-demand freelance—these workers seem to be ubiquitous in most industrial sectors. These arrangements are impacting work organization, career paths, and health and safety. According to various reports, there were an estimated 17 million workers engaged in some type of temporary employment in the United States in 2013, the most in the nation's history. [MBO Partners] There is also evidence that this upward trend will continue. Complexities of temporary employment arrangements have created some ambiguity over the responsibility for complying with health and safety standards, which can result in increased health and safety risks in the workplace. A growing body of research demonstrates that temporary workers have higher rates of workplace injury [OSHA, 2013; Fabiano, 2008]. According to ProPublica research, temporary workers have double the risk of suffering

Resources

Arkansas Department of Labor “Work Readiness of Temporary Employees” best practices



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Questions?

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Thank you

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