



Who Is Responsible For The Safety And Health Of Temporary Employees?

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- The federal Occupation Health and Safety Administration (OSHA) aims "to assure so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve our human resources."
- In the course of this goal, it applies regulations to every kind of employer, including temporary staffing agencies.



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Who Is Responsible For The Safety And Health Of Temporary Employees? (Cont'd)

- These agencies differ from other employers because supervision of employees is shared with the "host employer" or host.
- The employees who work through employment agencies are generally called "temporary," "leased," or "supplied" workers.
- The following is a discussion of specific areas of responsibilities and how federal OSHA has stated through various letters of interpretations that it will interpret and apply regulations.



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HAZCOM

- Temporary employment agencies that send their own employees to work at other facilities are considered by OSHA to be employers whose employees may be exposed to hazards. There is a shared responsibility for assuring that your employees are protected from the workplace hazards.
- In meeting the requirements of OSHA's Hazard Communication standard the temporary agency employer would, for example, be expected to provide the training and information requirements specified by the HCS section (h)(1). Host employers would then be responsible for providing site-specific training and would have the primary responsibility to control potential exposure conditions.



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- In summary, the temporary agency employer would be expected to provide some generic training and host employers would be responsible for providing site-specific training, or training to update employees on new hazards in the workplace.



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PERSONAL PROTECTIVE EQUIPMENT (PPE)

- Host employers are responsible for providing PPE for site-specific hazards to which employees may be exposed. However, again, the host may specify the services that it wants the temporary agency employer to supply, including provision of PPE for the placed employees.



INJURY/ILLNESS LOGS

- OSHA regulations require employers to record work-related illnesses and injuries on the OSHA 300 log for all employees on their payroll. The regulations also require employers to maintain such records for employees not on their payroll ***including temporary employees from a staffing firm.***
- According to OSHA, day-to-day supervision means supervision of the “details, means, methods, and processes by which the work is to be accomplished.” In the majority of cases, the employer, not the staffing firm, exercises these functions.



INJURY/ILLNESS LOGS (Cont'd)

- It is also important to note that an injured temporary or leased employee, who requires days from work, may be replaced by another leased or temporary employee at the work site.
- In the situation above, the controlling employer has the ultimate responsibility for making good-faith recordkeeping determinations regarding an injury and illness to any of those temporary employees they supervise on a day-to-day basis.



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MEDICAL SURVEILLANCE AND RECORDKEEPING

- The host employer must offer and perform the required medical surveillance or evaluations. The temporary agency employer must ensure that the records of the required medical surveillance or evaluations are maintained in accordance with the appropriate OSHA standards.



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CUMULATIVE EXPOSURE DOCUMENTATION

- The temporary help service must maintain employee records in accordance with the appropriate OSHA standard (e.g. the Lead standard, the Occupational Noise Exposure standard, etc.). However, the host employer must perform the site characterization and monitoring of exposure to hazardous chemicals on the work site.



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INCENTIVE PROGRAMS

- Some safety incentive programs actually present concerns to OSHA. Many employers have excellent safety incentive programs, but there are also some negative incentive programs that actually encourage employees to not report workplace injuries and illnesses.



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DURING AN INSPECTION

- When an OSHA Compliance Safety and Health Officer (CSHO) performs an inspection, that CSHO has a right to interview (at reasonable times) all affected employees regardless of whether they are temporary, loaned, leased, volunteer, part-time, or full-time. If the employer prevents the CSHO from doing so, the CSHO may terminate the inspection and get an inspection warrant.



HAZARD EXPOSURE RESPONSIBILITY

- Whether or not exposed persons are employees of an employer and subject to a citation from Indiana OSHA depends on several factors, the most important of which is who controls the manner in which the employees perform their assigned work.



TWO U.S. SUPREME COURT CASES

- Two U.S. Supreme Court cases (neither case involved occupational safety and health), that discuss the criteria to be considered in determining the existence of a master-servant (or employer-employee) relationship in common law, are **Nationwide Mutual Insurance Company v. Darden**, 503 U.S. 318, 112 S.Ct. 1344, 117 L.Ed 2d 581 (1992) and **Community for Creative Non-Violence v. Reid**, 490 U.S. 730, 109 S.Ct. 2166 (1989). The cases held that the following criteria are to be considered in determining whether there is an employer-employee relationship.
 1. Right to control the manner and means by which work is accomplished.
 2. The level of skill required to perform effectively.
 3. Source of required instruments and tools.
 4. Location of work.
 5. Duration of relationship between parties.



TWO U.S. SUPREME COURT CASES (Cont'd)

6. The right of the employer to assign new projects to the worker.
7. The extent of the worker's control over when and how long to work.
8. Method of payment.
9. The worker's role in hiring and paying assistants.
10. Whether work is the regular business of the employer.
11. Whether the employer is in business.
12. The provision of employee benefits.
13. The tax treatment of the worker.



TWO U.S. SUPREME COURT CASES (Cont'd)

- The Court also cited Section 220(2) of the Second Restatement of Agency (1958) which describes factors that indicate a master-servant relationship and held that all of the factors of the relationship must be weighed and assessed with no one factor being decisive.



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FOR ADDITIONAL INFORMATION ABOUT TEMPORARY WORKERS

- For additional information about temporary workers in specific industries see the links below for free videos that provide occupational safety and health training. The videos includes a general safety orientation and six modules focusing on indentifying hazards at construction, landscaping, manufacturing and food distribution sites, warehouses and offices. It is a product of an alliance among OSHA's Columbus, Ohio, Area Office, the Ohio Bureau of Workers' Compensation, OSHA On-site Consultation, Staffmart, and the Ohio Staffing and Search Association. Safety training for temporary workers.
- <http://www.ohiobwc.com/employer/services/safetyhygiene.asp>
- [Safety for Temporary Workers – Main Module \(9:46\)](#)
- [Safety for Temporary Workers in Construction \(4:20\)](#)
- [Safety for Temporary Workers in Food Service \(5:11\)](#)
- [Safety for Temporary Workers in Industrial/Manufacturing \(4:43\)](#)
- [Safety for Temporary Workers in Landscaping \(4:23\)](#)
- [Safety for Temporary Workers in Offices \(6:08\)](#)
- [Safety for Temporary Workers in Warehousing \(3:41\)](#)



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FOR ADDITIONAL INFORMATION ABOUT TEMPORARY WORKERS

Protecting Temporary Employees

- https://www.osha.gov/temp_workers/index.html



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FINAL QUOTE

"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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