

OSHA Focuses on the Safety and Health of the Nation's Temporary Workers
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Three million temporary workers are employed in the United States, including those who work under a host employer and those who work for a staffing agency. Between June 2012 and June 2013, "[a]t least 14 temporary workers ... died during their first day at a new worksite."¹ According to OSHA, the reason for this stunning statistic is clear:

Many employers decide to forego important safety training for their temporary employees that would normally be given to permanent employees. They bring in 'temps' for a few days, weeks or even months, and the employer's commitment to these workers' safety mirrors that 'temp' status.... Employers hire temps to save money. Safety training is a cost of doing business, so some employers just skip it or erroneously assume that the staffing agency has conducted the training....²

Consequently, OSHA launched its Temporary Worker Initiative last year to help protect temporary workers from workplace hazards.³ According to OSHA, "[s]taffing agencies and their client employers who host temporary workers share the legal obligations to provide workplaces free of recognized hazards."⁴ In other words, employers and staffing agencies are jointly responsible for the safety of their temporary workers and should consider which is in a position to prevent and correct hazards and to comply with OSHA standards.⁵ For example: staffing agencies might provide general safety and health training, while host employers provide specific training tailored to the particular workplace equipment/hazards.⁶ Host employers must treat temporary workers just as they would treat any other employees. And, staffing agencies should determine: what conditions exist at the employer's workplace; what hazards may be encountered and how best to ensure protection for the temporary workers; and, whether the host employer maintains a safe workplace.⁷

¹ June 2013 Statement by Dr. David Michaels, Assistant Secretary of Labor. See also *OSHA launches initiative to protect temporary workers*, OSHA News Release: 13-800-NAT (Apr. 29, 2013), https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=23994 (referencing a series of reports about temporary workers suffering fatal injuries – many during their first days on a job -- and the ensuing citations issued by the agency to employers that failed to provide adequate protections, including safety training).

² Dr. David Michaels, OP-Ed., *Temporary workers face unnecessary, life-threatening hazards*, Bay Area Insider (Nov. 16, 2013), https://www.osha.gov/temp_workers/OP_ED_Bay_Area.html.

³ OSHA, *supra* Note 1.

⁴ Michaels, *supra* Note 2.

⁵ OSHA: *Protecting Temporary Workers*, https://www.osha.gov/temp_workers/ (last visited July 21, 2014).

⁶ *Id.*

⁷ *Id.*

OSHA's March 2014 Temporary Worker Initiative (TWI) – Bulletin No. 1 addresses how to identify who is responsible for recording temporary workers' work-related injuries and illnesses on the OSHA 300 log when such workers are employed under the joint or dual employment of a host employer and a staffing agency, including:

- Injuries and illnesses should be recorded on only one employer's injury and illness log. 29 C.F.R. § 1904.31(b)(4).
- Employers must record temporary workers' injuries and illnesses if they supervise such workers on a day-to-day basis. 29 C.F.R. § 1904.31(a). Day-to-day supervision occurs when an employer controls conditions presenting potential hazards and directs the worker's activities around, and exposure to, those hazards.
- The host employer usually is responsible for recording the injuries and illnesses of temporary workers.
- The presence of a staffing agency representative at the host employer's worksite does not necessarily transfer recordkeeping responsibility to the staffing agency.
- The non-supervising employer still shares responsibility for its workers' safety and health.
- The staffing agency should maintain frequent communication with its workers and the host employer to ensure that: injuries and illnesses are properly reported and recorded; and, the staffing agency is alerted to workplace hazards and necessary protective measures.
- Ongoing communication after an injury or illness is necessary to provide the recording employer with information on case outcome.⁸

Moreover, OSHA's Bulletin emphasizes that information about injuries and illnesses should flow between a host employer and staffing agency in order to provide safe working conditions. For example, host employers should inform the staffing agency if a temporary worker sustains an injury or illness, so the staffing agency knows about the hazards facing its workers; and, a staffing agency should inform a host employer of an injury or illness to help prevent future injuries and to ensure that the case is recorded.⁹

As a best practice, the staffing agency and host employer should establish notification procedures to ensure that when a worker informs one employer of an injury or illness, the other employer is apprised as well. The details of how this communication is to take place should be clearly established in contract language.¹⁰

In addition to providing TWI Bulletin No. 1, OSHA has directed its field inspectors to assess employer compliance with OSHA responsibilities by using a newly created code to flag when temporary workers are exposed to safety and health violations and to determine whether

⁸ *Injury and Illness Recordkeeping Requirements, OSHA Temporary Worker Initiative (TWI) – Bulletin No. 1*, https://www.osha.gov/temp_workers/OSHA_TWI_Bulletin.pdf (last visited July 21, 2014).

⁹ *Id.*

¹⁰ *Id.*

temporary workers are trained in a language and vocabulary they can understand.¹¹ And, several recent enforcement announcements attest to OSHA's intent to protect temporary workers, including:

- "OSHA inspectors found that temporary workers employed by Marathon Staffing Corp. at Sterilite's facility were also exposed to hazards. As a result, OSHA cited Marathon for one serious health violation ... because the staffing agency failed to administer an effective hearing conservation program for occupational noise exposure. Marathon has a contract with Sterilite to provide temporary inspectors and packers at Sterilite facilities.... During the inspection, OSHA inspectors paid special attention to the hazards facing temporary workers to determine the role of the host employer and the staffing agency in failing to eliminate serious hazards."¹²
- "Fresh From Texas Inc., a fresh fruit and vegetable processor ... and staffing agency iWorks Personnel Inc. have been cited for 18 violations ... for exposing workers to damaging noise levels, chemical hazards and possible amputation hazards for failing to train machine operators on controlling hazardous energy. ... 'Workers, whether employed directly by the company or as a temporary worker, require proper training on workplace hazards. In this case, both Fresh From Texas and iWorks failed to do so and put workers in danger,' said ... OSHA's area director in San Antonio. 'Both host employers and staffing agencies have roles in complying with workplace health and safety requirements, and they share responsibility for ensuring worker safety and health.' Fresh From Texas was cited for 12 serious safety and health violations ... for failing to prevent workers from exposure to hazardous chemicals; to identify and evaluate respiratory hazards in the workplace; and to ensure a hearing conservation program was implemented for workers exposed to noise levels that would cause permanent hearing damage.... Three other violations ... were cited for failing to record injuries of temporary workers, review the log for accuracy and ensure safety instructions were clearly posted on dangerous machines.... OSHA inspectors found that temporary workers employed by iWorks Personnel were also exposed to chemical hazards and were not trained on chemical safety. As a result, OSHA cited iWorks for one serious safety and health violation..."¹³
- "California Cereal Products Inc. was cited ... for nine serious safety and health violations for exposing full-time and temporary workers to electrical, fall and noise

¹¹ *OSHA Memorandum for Regional Administrators: Protecting the Safety and Health of Temporary Workers* (Apr, 29, 2013), https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=28613.

¹² *OSHA Region 4 News Release: 14-1217-ATL (180)* (July 9, 2014), https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=26340.

¹³ *OSHA Region 6 News Release: 14-1143-DAL* (June 30, 2014), https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=26292.

hazards following an inspection at the company's cereal production facility in Macon."¹⁴

- "Maplewood Beverage Packers LLC and temporary employment agency Corporate Resource Services Corp. in Elizabeth have been cited ... for health and safety violations found at the beverage bottling company's Maplewood plant. OSHA's December 2013 investigation, which found willful and repeat violations, was initiated following a referral from the Maplewood Fire Department after a temporary worker was injured after falling from a ladder. OSHA has proposed \$182,270 in penalties. 'Host employers and staffing agencies are jointly responsible for ensuring worker safety and health,' said Kris Hoffman, director of OSHA's Parsippany Area Office. 'Employers must protect all workers from job hazards-both permanent and temporary workers.' OSHA cited Maplewood Beverage with one willful, one repeat, 17 serious and two other safety and health violations. The employer also failed to notify employees upon first entering employment and annually thereafter about noise exposure records, the person responsible for maintaining and providing access to noise exposure records, and their rights to access medical and/or exposure records.... Corporate Resources Services employed the temporary workers and supplied labor to Maplewood Beverage. OSHA cited the temporary employment agency for two serious health and safety violations for failure to conduct a hazard assessment of the workplace, ensure that each employee was informed of the effects of noise on hearing and inform each employee about hearing protectors."¹⁵
- A temporary worker "died from injuries sustained after he was caught in between a conveyor system and crushed while performing sorting operations at an Amazon fulfillment center in Avenel. Following an investigation initiated in response to the fatality, the U.S. Department of Labor's Occupational Safety and Health Administration has cited five companies for serious violations, including the contractor responsible for operating the facility, and four temporary staffing agencies. 'Temporary staffing agencies and host employers are jointly responsible for the safety and health of temporary employees. These employers must assess the work site to ensure that workers are adequately protected from potential hazards,' said Patricia Jones, director of OSHA's Avenel Area Office. 'It is essential that employers protect all workers from job hazards-both temporary and permanent workers.' Third-party logistics provider Genco, based in Pittsburgh, was contracted by Amazon to direct the temporary employees from four staffing agencies involved in sorting operations. The employees were required to monitor the conveyors and sorting machine to ensure packages were positioned properly while traveling over the conveyor and sorting belts. Genco was cited for one serious violation for not certifying that a hazard assessment of the facility had been conducted before assigning employees to work ... Temporary staffing agencies Abacus-The Corporate Services Co., Baltimore, which

¹⁴ *OSHA Region 4 News Release: 14-1060-ATL (143) (June 19, 2014),*
https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=26250.

¹⁵ *OSHA Region 2 News Release: 14-1162-NEW (osha 14-048) (June 18, 2014),*
https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=26244.

employed Smith; New York-based Corporate Resource Services Inc., doing business as Diamond Staffing Services; Remedy Intelligent Staffing Inc., doing business as a division of Selective Staffing, Santa Barbara, Calif.; and Staffmark, headquartered in Ohio, were each cited by OSHA for one serious violation for failure to perform a hazard assessment of the facility before assigning employees to determine if hazards existed."¹⁶

In the future, OSHA will continue to focus on temporary employees. On May 21, 2014, OSHA announced an alliance with the American Staffing Agency to work together to further protect temporary employees from workplace hazards.¹⁷ And, on July 14, 2014, OSHA announced a July 28, 2014 meeting of the National Advisory Committee on Occupational Safety and Health's Temporary Workers Workgroup to discuss protecting temporary workers, including gaps in workplace protection for temporary workers, differences between temporary workers and contract workers, and joint responsibility of host employers and staffing agencies.¹⁸

Therefore, both host employers and staffing agencies should take responsibility for the health and safety of temporary workers and should communicate with each other to set out respective responsibilities for compliance with applicable OSHA standards and prevention and correction of hazards. The end goal, of course, is to make sure that temporary workers receive the same protections as permanent workers and that all workers are protected from occupational safety and health hazards.

¹⁶ *OSHA Region 2 News Release: 14-1125-NEW* (osha 14-042) (June 12, 2014), https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=26208.

¹⁷ *OSHA Trade News Release* (May 21, 2014), https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=26046.

¹⁸ *OSHA Trade News Release* (July 14, 2014), https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWS_RELEASES&p_id=26343.