

Temporary Workers and Staffing Agency

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It was one year ago that OSHA announced the new emphasis program for Staffing companies. Now would be a good time to review what is included in that program.

Protecting Temporary Workers

The Department of Labor's Occupational Health and Safety Administration, OSHA, has an initiative in place that focuses on the temporary worker. This puts emphasis 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 and the environment that employee is placed in.

The following statement by David Michaels, Assistant Secretary of Labor for Occupational Safety and Health, appears on the OSHA website

"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."

So, what are the responsibilities of the Staffing Agency according to OSHA?

- Staffing agencies must have ongoing communication with the host employer to ensure that the necessary protections are provided to its employees.
- Staffing agencies have a duty to inquire into the conditions of their workers' assigned workplaces. They must ensure that they are sending workers to a safe workplace.
- Ignorance of hazards is not an excuse.
- Staffing agencies need not become experts on specific workplace hazards, but they should determine what conditions exist at their client (host) company, what hazards may be encountered, and how best to ensure protection for the temporary workers.
- The staffing agency has the duty to inquire and *verify* that the host company has fulfilled its responsibilities for a safe workplace.
- Staffing agencies must ensure that host employers *treat temporary workers like any other workers* in terms of training and safety and health protections.

Training

Staffing agencies typically provide general safety and health training, while the host employer or client, provides specific training tailored to the particular workplace, equipment, and hazards.

It is important that the staffing agency verify that this training is being conducted, and the employee understands and has retained the information that was provided to him or her. The staffing agency



should keep records of all training the employee has received and not just rely on the host or client company to keep this information for them.

Client or host company evaluation

Pre-inspection: All staffing companies should conduct Pre-inspection survey of prospective client locations to evaluate employee exposures and the controls that are in place. This inspection should include:

- A review of losses in the area
- Personal Protective Equipment requirements
- Job descriptions for the tasks that the employee is to perform

Ongoing evaluations: These evaluations will enable the staffing company to ensure that no changes or conditions have occurred since the last

visit to the location and should be conducted at least quarterly. This is also a good time to ensure that any safety recommendations made during the last evaluation have been implemented by the client.

Joint evaluations: Joint evaluations are a good way to ensure that you have addressed exposures and controls for your employees. An effective way to conduct these is with the safety manager of your client, additionally Zurich Risk Engineering is here to assist you with these evaluations.

Documentation: All staffing companies should maintain written documentation of all evaluations along with recommendations and resolutions to recommendation. This is also an effective way to establish safety goals for your client location as well as evaluate the client during your annual reviews.

While most staffing companies take a proactive role in assuring that their employees are working in a safe environment, they have never had this level of attention by federal and state OSHA compliance until now.

OSHA Memorandum

On April 29, 2013, OSHA issued a memorandum titled, Protecting the Safety and Health of Temporary Worker. This memorandum was authored by THOMAS GALASSI, Director of Enforcement Programs. The memorandum instructs their field compliance staff on how they want to address temporary workers during a compliance visit. Below are a few key areas they will be focus on:

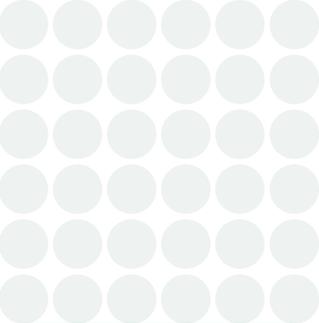
- “Determine within the scope of their inspections whether any employees are temporary workers and whether any of the identified temporary workers are exposed to a violative condition;
- Assess, using records review and interviews, whether those workers have in fact *received required training in a language 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., the extent to which the temporary workers are being supervised on a day-to-day basis either by the host employer or the staffing agency).”

While most staffing companies take a proactive role in assuring that their employees are working in a safe environment, they have never had this level of attention by federal and state OSHA compliance until now. We expect this approach will continue for the foreseeable future.

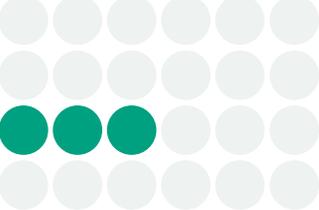
Joint Responsibility

OSHA now considers the staffing agency and their client to have a joint responsibility for the safety of the employees.

- The host employer and the staffing company are jointly responsible for maintaining a safe work environment for temporary workers – including ensuring that OSHA’s training, hazard communication, and record keeping requirements are fulfilled.
- OSHA has held both the host and the temporary employer’s staffing agency responsible for the deficient condition(s) including lack of adequate training regarding workplace hazards, personal protective equipment, etc.
- Temporary staffing agencies and host employers share control over the worker and are therefore jointly responsible for temporary workers’ safety and health.



The staffing agency should keep records of all training the employee has received and not just rely on the host or client company to keep this information for them.



OSHA Recordkeeping Requirements

At times there is confusion as to who has the responsibility to record an injury or illness on the OSHA 300 log. The following excerpt was taken from the OSHA TWI Bulletin No.1 which is available on the OSHA website.

https://www.osha.gov/temp_workers/OSHA_TWI_Bulletin.pdf

“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. Both employers are responsible to some degree for determining the conditions of employment and for complying with the law. In this joint employment structure, questions regarding which employer is responsible for particular safety and health protections are common. This bulletin addresses how to identify

who is responsible for recording work-related injuries and illnesses of temporary workers on the OSHA 300 log.

Injuries and illnesses should be recorded on only one employer's injury and illness log. 29 CFR 1904.31(b) (4). In most cases, the **Host Employer** is the one responsible for recording the injuries and illnesses of temporary workers.

Injury and illness recordkeeping responsibility is determined by supervision. Employers must record the injuries and illnesses of temporary workers if they supervise such workers on a day-to-day basis. 29 CFR 1904.31(a). Day-to-day supervision occurs when “in addition to specifying the output, product or result to be accomplished by the person's work, the employer supervises the details, means, methods and processes by which the work is to be accomplished.”

The Zurich Services Corporation

1400 American Lane, Schaumburg, Illinois 60196-1056
800 982 5964 www.zurichna.com

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Risk Engineering

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