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Recommended Practices: Protecting Temporary Workers

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Recommended Practices: Protecting Temporary Workers

Abstract

[Excerpt] Workers employed through staffing agencies are generally called *temporary* or *supplied* workers. For the purposes of these recommended practices, “temporary workers” are those supplied to a host employer and paid by a staffing agency, whether or not the job is actually temporary. Whether temporary or permanent, **all workers always have a right to a safe and healthy workplace**. The staffing agency and the staffing agency’s client (the *host employer*) are joint employers of temporary workers and, therefore, both are responsible for providing and maintaining a safe work environment for those workers. The staffing agency and the host employer must work together to ensure that the *Occupational Safety and Health Act of 1970* (the OSH Act) requirements are fully met. See *29 U.S.C. § 651*. The extent of the obligations of each employer will vary depending on workplace conditions and should therefore be described in the agreement or contract between the employers. Their safety and health responsibilities will sometimes overlap. Either the staffing agency or the host employer may be better suited to ensure compliance with a particular requirement, and may assume primary responsibility for it. The joint employment structure requires effective communication and a common understanding of the division of responsibilities for safety and health. Ideally, these will be set forth in a written contract.

OSHA and NIOSH recommend the following practices to staffing agencies and host employers so that they may better protect temporary workers through mutual cooperation and collaboration. *Unless otherwise legally required, these recommendations are for the purpose of guidance and in some cases represent best practices.*

Keywords

temporary workers, workplace safety, injury, protection

Comments

Suggested Citation

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Recommended Practices



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 Assessment and Control Evaluation (FACE) Program, 11MA050.

Workers employed through staffing agencies are generally called *temporary* or *supplied* workers. For the purposes of these recommended practices, "temporary workers" are those supplied to a host employer and paid by a staffing agency, whether or not the job is actually temporary. Whether temporary or permanent, **all workers always have a right to a safe and healthy workplace.** The staffing agency and the staffing agency's client (the *host employer*) are joint employers of temporary workers and, therefore, both are responsible for providing and maintaining a safe work environment for those workers. The staffing agency and the host employer must work together to ensure that the *Occupational Safety and Health Act of 1970* (the OSH Act) requirements are fully met. See [29 U.S.C. § 651](#). The extent of the obligations of each employer will vary depending on workplace conditions

and should therefore be described in the agreement or contract between the employers. Their safety and health responsibilities will sometimes overlap. Either the staffing agency or the host employer may be better suited to ensure compliance with a particular requirement, and may assume primary responsibility for it. The joint employment structure requires effective communication and a common understanding of the division of responsibilities for safety and health. Ideally, these will be set forth in a written contract.

OSHA and NIOSH recommend the following practices to staffing agencies and host employers so that they may better protect temporary workers through mutual cooperation and collaboration. *Unless otherwise legally required, these recommendations are for the purpose of guidance and in some cases represent best practices.*

- ▶ **Evaluate the Host Employer’s Worksite.** Prior to accepting a new host employer as a client, or a new project from a current client host employer, the staffing agency and the host employer should jointly review all worksites to which the worker might foreseeably be sent, the task assignments and job hazard analyses in order to identify and eliminate potential safety and health hazards and identify necessary training and protections for each worker. The staffing agency should provide a document to the host employer that specifies each temporary worker’s specific training and competencies related to the tasks to be performed.

Staffing agencies need not become experts on specific workplace hazards, but should determine what conditions exist at the worksite, what hazards may be encountered, and how to best ensure protection for the temporary workers. Staffing agencies, particularly those without dedicated safety and health professionals on staff, should consider utilizing a third-party safety and health consultant. For example, staffing agencies may be able to utilize the safety and health consultation services provided by their workers’ compensation insurance providers. These consultation services are often offered to policyholders at little to no charge. Employers (staffing agencies and host employers) should inquire with their insurance providers about these services. Small and medium-sized businesses may request assistance from OSHA’s free on-site consultation service. On-site consultation services are separate from enforcement and do not result in penalties or citations.

If information becomes available that shows an inadequacy in the host employer’s job hazard analyses, such as injury and illness reports, safety and health complaints or OSHA enforcement history, the staffing agency should make efforts to discuss and resolve those issues with the host employer to ensure that existing hazards

are properly assessed and abated to protect the workers. In assessing worksite hazards, host employers typically have the safety and health knowledge and control of worksite operations. However, the staffing agency may itself perform an inspection of the workplace, if feasible, to conduct their own hazard assessment or to ensure implementation of the host employer’s safety and health obligations for temporary workers.

- ▶ **Train Agency Staff to Recognize Safety and Health Hazards.** Many staffing agencies do not have dedicated safety and health professionals and, even when they do, these experts cannot be everywhere at once. By teaching agency representatives about basic safety principles and the hazards commonly faced by its temporary workers, the agency will be better equipped to discover hazards and work with the host employer to eliminate or lessen identified workplace hazards before an injury or illness occurs.
- ▶ **Ensure the Employer Meets or Exceeds the Other Employer’s Standards.** When feasible, the host employer and staffing agency should exchange and review each other’s injury and illness prevention program. Host employers should also request and review the safety training and any certification records of the temporary workers who will be assigned to the job. Host employers in certain industries, for example, will only accept bids from and hire staffing agencies that the host has previously verified as meeting the host employer’s safety standards. Similarly, some staffing agencies work only with clients that have robust safety programs.
- ▶ **Assign Occupational Safety and Health Responsibilities and Define the Scope of Work in the Contract.** The extent of the responsibilities the staffing agency and the host employer have will vary depending on the workplace conditions and should be described in their agreement. Either the staffing agency or the host employer may be better suited to ensure compliance with

a particular requirement, and may assume primary responsibility for it. When feasible, the agency-host contract should clearly state which employer is responsible for specific safety and health duties. The contract should clearly document the responsibilities to encourage proper implementation of all pertinent safety and health protections for workers. This division of responsibilities should be reviewed regularly.

The tasks that the temporary worker is expected to perform, and the safety and health responsibilities of each employer, should be stated in the agency-host contract and should be communicated to the worker before that worker begins work at the job site. For example, should the job tasks require personal protective equipment, the contract should state what equipment will be needed and which employer will supply it. The worker should be informed of these details before beginning the job. Clearly defining the scope of the temporary worker's tasks in the agency-host contract discourages the host employer from asking the worker to perform tasks that the worker is not qualified or trained to perform or which carry a higher risk of injury. Defining, clarifying, and communicating the employers' and worker's responsibilities protects the workers of both the staffing agency and of the host employer. The contract should specify who is responsible for all such communications with the temporary worker.

- ▶ **Injury and Illness Tracking.** Employer knowledge of workplace injuries and investigation of these injuries are vital to preventing future injuries from occurring. Information about injuries should flow between the host employer and staffing agency. If a temporary worker is injured and the host employer knows about it, the staffing agency should be informed promptly, so the staffing agency knows about the hazards facing its workers. Equally, if a staffing agency learns of an injury, it should inform the host employer promptly so that future injuries

might be prevented, and the case is recorded appropriately. The parties should therefore also discuss a procedure to share injury and illness information between the employers, ideally specifying that procedure contractually.

NOTE on Injury and Illness Recordkeeping Requirements: Both the host employer and staffing agency should track and where possible, investigate the cause of workplace injuries. However, for statistical purposes, OSHA requires that injury and illness records (often called OSHA Injury and Illness Logs) be kept by the employer who is providing day-to-day supervision, i.e., controlling the means and manner of the temporary employees' work (the host employer, generally). See [29 CFR 1904.31\(b\)\(2\)](#). The agency-host contract should therefore identify the supervising employer and state that this employer is responsible for maintaining the temporary workers' injury and illness records. Employers cannot discharge or contract away responsibilities that pertain to them under law. Further, the contract should specify which employer will make the records available upon request of an employee or an employee representative.

The supervising employer is required to set up a method for employees to report work-related injuries and illnesses promptly and must inform each employee how to report work-related injuries and illnesses. However, both the staffing agency and the host employer should inform the temporary employee on this process and how to report a work-related injury or illness. See [29 CFR 1904.35\(b\)](#).

No policies or programs should be in place that discourage the reporting of injuries, illnesses or hazards. The OSH Act prohibits employers from retaliating against a worker for reporting an injury or illness, including for filing a workers' compensation claim for a work-related condition.

- ▶ **Conduct Safety and Health Training and New Project Orientation.** OSHA standards require site- and task-specific safety and health training. The training must be in a language the workers understand. Training helps to protect the workers of both the staffing agency and the host employer.

The training of temporary workers is a responsibility that is shared between the staffing agency and the host employer. Staffing agencies should provide general safety and health training applicable to different occupational settings, and host employers provide specific training tailored to the particular hazards at their workplaces. The host employer and the staffing agency should each provide — separately or jointly — safety and health orientations for all temporary workers on new projects or newly-placed on existing projects. The orientation should include information on general worker-protection rights and workplace safety and health. At least one of the joint employers, generally the host employer, must provide worksite-specific training and protective equipment to temporary workers, and identify and communicate worksite-specific hazards. The temporary workers' tasks, as defined by the agency-host contract, should also be clearly communicated to the workers and reviewed with the host employer's supervisor(s). **Host employers should provide temporary workers with safety training that is identical or equivalent to that provided to the host employers' own employees performing the same or similar work.** Host employers should inform staffing agencies when such site-specific training for temporary workers has been completed. Informing workers and supervisors of their respective responsibilities agreed upon by the joint employers protects the workers of both the staffing agency and the host employer.

- **First Aid, Medical Treatment, and Emergencies.** Procedures should be in place for both reporting and obtaining treatment for on-the-job injuries and illnesses. Temporary employees should be provided with information on how to report an injury and obtain treatment on every job assignment. Host employers should train temporary employees on emergency procedures including exit routes.

- ▶ **Injury and Illness Prevention Program.** It is recommended that staffing agencies and host employers each have a safety and health program to reduce the number and severity of workplace injuries and illnesses and ensure that their temporary workers understand it and participate in it. The employers' safety programs should be communicated at the start of each new project, whenever new temporary workers are brought onto an existing project, or whenever new hazards are introduced into the workplace.

NOTE: Employers are required to have hazard-specific programs when workers are exposed to certain hazards. Such programs include bloodborne pathogens, hearing conservation, hazard communication, respiratory protection, and control of hazardous energy (lock-out/tag-out).

Contractors and employers who do construction work must comply with standards in 29 CFR 1926, Subpart C, General Safety and Health Provisions. These include the responsibilities for each contractor/employer to initiate and maintain accident prevention programs, provide for a competent person to conduct frequent and regular inspections, and instruct each employee to recognize and avoid unsafe conditions and know what regulations are applicable to the work environment.

- **Injury and Illness Prevention Program Assessments.** The employers should identify and track performance measures key to evaluating the program's effectiveness. For both staffing agencies and host employers, a quality program will stipulate how there will be ongoing assessments to evaluate the consistency, timeliness, quality and adequacy of the program. Leading indicators, such as training and number of hazards identified and corrected, should be included in the assessments. Generally speaking, these assessments should take place at least on an annual basis with a competent internal team or a combined internal and external team. The value of these assessments is the resulting prioritized recommendations for program improvement.
- **Incidents, Injury and Illness Investigation.** In addition to reporting responsibilities, employers should conduct thorough investigations of injuries and illnesses, including incidents of close-calls, in order to determine what the root causes were, what immediate corrective actions are necessary, and what opportunities exist to improve the injury and illness prevention programs. It is critical that both the staffing agency and host employer are engaged in partnership when conducting these investigations.
- ▶ **Maintain Contact with Workers.** The staffing agency should establish methods to maintain contact with temporary workers. This can be as simple as the agency representatives touching base with the workers throughout the temporary assignment, such as when the representatives are at the site to meet with the host employer or to drop off paychecks, or by phone or email. The staffing agency has the duty to inquire and, to the extent feasible, verify that the host has fulfilled its responsibilities for a safe workplace.

The staffing agency should have a written procedure for workers to report any hazards and instances when a worker's tasks are altered by the host employer from those previously agreed upon. The staffing agency and host employer should inform workers how to report hazards and/or changes to job tasks. For example, some staffing agencies have a hotline for their workers to call to report problems at the host employer's worksite. The staffing agency distributes this phone number during the orientation.

The staffing agency should follow up on a worker's safety and health concerns and any complaints with the host employer, as well as investigate any injuries, illnesses and incidents of close calls.

How Can OSHA Help?

OSHA has a great deal of information to assist employers in complying with their responsibilities under the law. Information on OSHA requirements and additional health and safety information is available on the OSHA website (www.osha.gov). Further information on protecting temporary workers is available at the [OSHA Temporary Worker webpage \(www.osha.gov/temp_workers\)](http://www.osha.gov/temp_workers).

Workers have a [right to a safe workplace \(www.osha.gov/workers.html#2\)](http://www.osha.gov/workers.html#2). For other valuable worker protection information, such as Workers' Rights, Employer Responsibilities and other services OSHA offers, visit [OSHA's Workers' page](#).

The OSH Act prohibits employers from retaliating against their employees for exercising their rights under the OSH Act. These rights include raising a workplace health and safety concern with the employer, reporting an injury or illness, filing an OSHA complaint, and participating in an inspection or talking to an inspector. If workers have been retaliated

against for exercising their rights, they must file a complaint with OSHA within 30 days of the alleged adverse action. For more information, please visit www.whistleblowers.gov.

OSHA can help answer questions or concerns from employers and workers. To reach your regional or area OSHA office, go to OSHA's [Regional and Area Offices webpage](http://www.osha.gov/html/RAmap.html) (www.osha.gov/html/RAmap.html) or call 1-800-321-OSHA (6742). OSHA also provides help to small and medium-sized employers. OSHA's [On-site Consultation Program](#) offers free and confidential advice to small and medium-sized businesses in all states across the country, with priority given to high-hazard worksites. On-site consultation services are separate from enforcement activities and do not result in penalties or citations. To contact OSHA's free consultation program, or for additional compliance assistance, call OSHA at 1-800-321-OSHA (6742).

Workers may [file a complaint](#) to have OSHA inspect their workplace if they believe that their employer is not following OSHA standards or that there are serious hazards. Employees can file a complaint with OSHA by calling 1-800-321-OSHA (6742) or by printing the complaint form and mailing or faxing it to your local OSHA area office. Complaints that are signed by an employee are more likely to result in an inspection.

If you think your job is unsafe or you have questions, contact OSHA at 1-800-321-OSHA (6742). It's confidential. We can help.

How Can NIOSH Help?

The National Institute for Occupational Safety and Health (NIOSH) is the federal agency that conducts research and makes recommendations to prevent worker injury and illness. Recommendations for preventing worker injuries and illnesses across all industries and for a wide variety of hazards are available on the NIOSH website (www.cdc.gov/niosh). To receive documents or more information about occupational safety and health topics, please contact NIOSH at 1-800-CDC-INFO (1-800-232-4636), TTY 1-888-232-6348.

The NIOSH Fatality Assessment and Control Evaluation (FACE) program investigates selected work-related fatalities to identify high-risk work injury situations and to make recommendations for preventing future similar deaths. Investigations are conducted by NIOSH and state partners. For more information and links to reports of temporary worker deaths, please visit www.cdc.gov/niosh/face. The Michigan and Massachusetts FACE programs have developed 1-2 page Hazard Alerts on temporary worker deaths that are available on their websites (www.oem.msu.edu/userfiles/file/MiFACE/TemporaryWorkerHA17.pdf and www.mass.gov/eohhs/docs/dph/occupational-health/temp-workers.pdf).

The NIOSH Health Hazard Evaluation (HHE) Program provides advice and assistance regarding work-related health hazards. NIOSH may provide assistance and information by phone, in writing, or may visit the workplace. The HHE Program can be reached at www.cdc.gov/NIOSH/HHE or 513-841-4382.

Disclaimer: This document is not a standard or regulation, and it creates no new legal obligations. It contains recommendations as well as descriptions of mandatory safety and health standards. The recommendations are advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace. The *Occupational Safety and Health Act* requires employers to comply with safety and health standards and regulations promulgated by OSHA or by a state with an OSHA-approved state plan. In addition, the Act's General Duty Clause, Section 5(a)(1), requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm.

