Safety of the Temporary Worker – Quick Tips



The Occupational Safety and Health (OSH) Act passed in 1970 requires employers to provide a safe and healthy workplace for all employees. Following the implementation of the OSH Act, one group of employees has grown significantly – temporary workers. These workers are often overlooked due to confusion about who is responsible for providing for their safety. Temporary workers are workers hired and paid by a staffing agency and supplied to a host employer to perform work on a temporary basis. In general, OSHA considers the staffing agency and host employer to be "joint employers" of the temporary worker. Joint employment is a legal concept recognizing that, in some situations, the key attributes of the traditional employer/employee relationship are shared by two or more employers in such a manner that they each bear responsibility for compliance with Occupational Safety and Health Administration (OSHA) regulations.

Responsibilities

To address the issue of who has what responsibility regarding the safety of temporary workers, OSHA launched a Temporary Worker Initiative (TWI) on April 29, 2013. The initiative serves as a resource and highlights the employers' responsibilities (both the host employer and the staffing agency) to ensure these workers are protected from workplace hazards. The driving force behind promulgation of the TWI was in response to Bureau of Labor Statistics (BLS) data indicating that temporary workers were suffering fatal injuries during their first days on the job. In many cases, this was a result of inadequate training.

To ensure that there is clear understanding of each employer's role in protecting employees, OSHA recommends that the staffing agency and the host employer set out their respective responsibilities for compliance with applicable OSHA standards in a contract. Establishing clear roles helps avoid confusion as to the employer's obligations regardless of whether or not it's the host employer or staffing agency. The roles and responsibilities are dependent on the specific facts of each case. Ultimately, staffing agencies and host employers share control over the worker and are jointly responsible for the worker's safety and health. To ensure that necessary precautions are provided to the temporary workers, communication between the staffing agency and host employer is vital.

A key concept to help determine what roles the staffing agency or host employer should accept is to consider who is in the best position to prevent and correct a hazard. For example, the staffing agency may provide general safety and health training, while the host employer would provide specific training tailored to the particular workplace.

OSHA provides some key points to remember regarding roles and responsibilities:

- The key is communication between the staffing agency and the host employer to ensure that the necessary protections are provided
- 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) site, what hazards may be encountered, and how best to ensure the safety of their workers
- Host employers must treat temporary workers like any other worker in terms of training and safety and health protections

Enforcement

Temporary workers have the same rights and protections under the OSH Act as regular employees. If during an OSHA inspection, OSHA determines that temporary workers were involved in a violation of an OSHA regulation they will consider issuing citations to either or both the host employer and/or staffing agency. The decision will be based on the specific facts of the case and what responsibilities/roles were communicated in the contract between the host employer and staffing agency. In the absence of a contract or communication, both the host employer and staffing agency would carry a shared responsibility likely leading to both being cited.

Highlights of the Temporary Worker Initiative (TWI) As stated earlier one of the purposes of the TWI is to serve as a resource for host employers and staffing agencies. Currently, the initiative has 13 supporting documents:

1. *Recommended Practices: Protecting Temporary Workers*
   This resource was developed by OSHA and the National Institute for Occupational Safety and Health (NIOSH). The document suggests recommended practices with respect to temporary worker training, inspection of worksites, injury tracking, prevention, reporting, and the delineation of the parties' respective safety duties in staffing agency contracts with host employers. OSHA has stated that the information provided in this documents constitute guidance only and are not required.
2. *Policy Background on the Temporary Worker Initiative*
   Provides supporting information on the why the TWI was created.
3. *TWI Bulletin No. 1: Injury and Illness Recordkeeping Requirements*
   Addresses which party is responsible for recording temporary worker injuries on the OSHA 300 log.
4. *TWI Bulletin No. 2: Personal Protective Equipment*
   Addresses how to identify who is responsible for providing personal protective equipment (PPE) pursuant to the PPE hazard assessment conducted for each task the temporary worker will be performing, as well as training that is necessary.
5. *TWI Bulletin No. 3: Whistleblower Protection Rights*
   Addresses whistleblower protection rights in a temporary worker situation.
6. *TWI Bulletin No. 4: Safety and Health Training*
   Addresses which party is responsible for providing generic and site-specific safety and health training.
7. *TWI Bulletin No. 5: Hazard Communication*
   Addresses which party is responsible for providing compliance with the Hazard Communication standard.
8. *TWI Bulletin No. 6: Bloodborne Pathogens*
   Addresses which party is responsible for providing a written exposure control plan and site-specific training and all remaining elements of the Bloodborne Pathogens standard.

9. *TWI Bulletin No. 7: Powered Industrial Truck Training*
   Addresses which party is responsible for providing operator training.
10. *TWI Bulletin No. 8: Respiratory Protection*
    Addresses which party is responsible for evaluating exposure levels, implementing and maintaining engineering, administrative, and work practice controls, providing the respirator, training, and maintaining a respiratory protection program that meets all parts of the Respiratory Protection standard.
11. *TWI Bulletin No. 9: Noise Exposure and Hearing Conservation*
    Addresses which party is responsible for determining noise exposure levels, implementing and maintaining engineering, administrative, and work practice controls, providing appropriate hearing protection, training, and maintaining a hearing conservation program.
12. *TWI Bulletin No. 10:The Control of Hazardous Energy (Lockout/Tagout)*
    Addresses which party is responsible for development and implementation of a site-specific lockout/tagout program and providing appropriate training.
13. Temporary Workers' Rights Pamphlet States temporary workers have the same rights as permanent workers.

Frequently Asked Questions

Q: Who is responsible for temporary worker safety?

A: OSHA considers the host employer and temporary agency as joint employers who share the safety responsibilities. Safety responsibilities will vary depending on the workplace conditions and may be clarified by agreement or contract between the temporary agency and host employer.

Q: Who is responsible for recording an injury or illness of a temporary worker?

A: OSHA does not allow injures or illness cases to be double-counted on more than one OSHA 300 log. Either the temporary agency or host employer must record the incident. To determine who should record the incident on their log comes down to who is performing day-to-day supervision and who controls and directs the work would record and manage the incident.

Sources

Temporary Worker Initiative, Occupational Safety and Health (OSHA), April 2013

Recommended Practices-Protecting Temporary Workers, Occupational Safety and Health (OSHA) publication number 3735 & National Institute for Occupational Safety and Health (NIOSH) publication number 2014-139, August 2014

Closing the Gap on Temporary Worker Safety, Professional Safety, June 2014

Best Practices for Temporary Worker Safety, BLR – June 2018

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