

Southern California Trade Contractors Association

Quarterly Safety Newsletter

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Injury and Illness Recordkeeping Requirements

This is the first in a series of guidance documents issued under the Occupational Safety and Health Administration's (OSHA's) Temporary Worker Initiative (TWI). This Initiative focuses 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.

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 illnesses 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." See OSHA FAQ 31-1 at www.osha.gov/recordkeeping. (Essentially, an employer is performing day-to-day supervision when that employer controls conditions presenting potential hazards and directs the worker's activities around, and exposure to, those hazards.) In most cases, the host employer provides this supervision.

While staffing agency may have a representative at the host employer's worksite, the presence of that representative does not necessarily transfer recordkeeping responsibilities to the staffing agency. As long as the host employer maintains day-to-day supervision over the worker, the host employer is responsible for recording injuries and illnesses.

The non-supervising employer (generally the staffing agency) still shares responsibility for its worker's safety and health. The staffing agency, therefore, should maintain frequent communication with its workers and the host employer to ensure that any injuries and illnesses are properly reported and recorded.

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Example Scenarios*

The examples provided below are fictitious but describe what often happens when temporary workers are not adequately trained for their job assignments by the staffing agencies and host employers.

Construction Scenario

Remediation and Construction, LLC (RAC) is a company that remediates damaged commercial and residential structures. They need additional skilled roofers to complete a commercial remediation project in Alaska. RAC contracts with Temp Staffing to provide unskilled laborers on a temporary basis to complete the job on time because unskilled laborers are less expensive than skilled roofers. Temp Staffing did not determine the type of work these workers would be doing and just provided generic safety and health training for the workers before sending them to RAC's worksite.

At the RAC worksite, a RAC foreman assigned three of the temporary workers to work on the roof. For several days, the workers remove roofing material on top of a sheet metal roof of a fire damaged building. The work location is approximately 13 feet above the ground.

RAC did not mention to Temp Staffing that the temporary workers would be used as roofers and did not mention that the workers would need fall protection training or any other jobsite specific training. The temporary workers convey their concerns to the RAC foreman regarding the lack of fall protection and training while working on the fire-damaged roof. The foreman takes no action to provide fall protection or fall protection training.

**The company names in this scenario are fictitious. Any resemblance to real companies is entirely coincidental.*

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Such communication also alerts the staffing agency to existing workplace hazards and to any protective measures that need to be provided to its workers. Ongoing communication is also needed after an injury and illness so the recording employer can know the outcome of the case.

The staffing agency and host employer must set up a way for employees to report work-related injuries and illnesses promptly and tell each employee how to report work-related injuries and illnesses. In addition, employees, former employees, their personal representatives, and their authorized employee representatives have the right to access the injury and illness records (29 CFR 1904.35).

In order to provide safe working conditions, information about injuries and illnesses should flow between the host employer and staffing agency. If a temporary worker sustains an injury or illness and the host employer knows about it, the staffing agency should be informed, so the staffing agency knows about the hazards facing their workers. Equally, if a staffing agency learns of an injury or illness, they should inform the host employer so that future injuries might be prevented, and the case is recorded. 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.

Safety and Health Training

Temporary workers are entitled to the same protections under the Occupational Safety and Health Act of 1970 (the OSHA Act) as all other covered workers. When a staffing agency supplies temporary workers to a business, typically, the staffing agency and the agency's client, commonly referred to as the host employer, are joint employers of those workers. Both employers are responsible to some degree for determining the conditions of employment situations, questions regarding how each employer can fulfill their duty to comply with the standard are common. This bulletin addresses what both the staffing agency and the host employer can do to provide safety and health training to temporary workers.

Many OSHA standards include specific safety and health training requirements to ensure that workers have the required skills and knowledge to safely perform their work. These requirements reflect OSHA's principle that training is an essential part of an effective safety and health management program for protecting workers from injuries and illnesses. Many fatal incidents have occurred where temporary workers were not provided the training necessary to do their job safely.

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Construction Analysis

RAC requested unskilled laborers instead of skilled roofers to complete training. Therefore, RAC had no reason to believe the workers had received fall protection training. RAC was in the best position to provide the jobsite-specific training. Since RAC should have known from the start of the project that the workers did not have fall protection training, and the RAC foreman found out during the course of the project that the workers had not received fall protection training, RAC was responsible for identifying the need for fall protection training, RAC was responsible for identifying the need for fall protection training and providing the training under 29 CFR 1926.503 – Training requirements. RAC supervised and controlled the day-to-day work of the temporary workers at its worksite. For this failure to provide appropriate site-specific training, RAC may be subject to an OSHA citation.

In most cases, the temporary agency is responsible for generic safety and health training. Although Temp Staffing provided such generic training, it also had a responsibility to determine what its workers would be doing and the hazards to which they would be exposed in order to ensure that site-specific training was provided and completed. Temp Staffing failed to fulfill this responsibility when it made no effort to determine what kind of work the workers would be performing or if RAC had provided the necessary training. For failure to ensure that appropriate site-specific training was provided, Tem Staffing may also be subjected to an OSHA citation related to fall protection training requirements.

Training of Temporary Workers

The staffing agency and the host employer share the responsibility for training temporary workers. Training must be completed before the worker begins work on a project and the training must be in a language and vocabulary the worker understands. Depending on the industry, worksite, and job duties to which the temporary worker is assigned, certain OSHA standards which require both generic and specific training may be applicable. While both the host and the staffing agency are responsible to ensure that the employee is properly trained according to the applicable standard, the employers may decide that a division of the responsibility may be appropriate. As a recommended practice, the staffing agency and host employer should establish which party is responsible for each aspect of training, as well as inform the other employer when training is completed. The details of the training to be performed can be clearly stated in the language of the contract between the employers. However, neither employer may avoid their ultimate responsibilities under the OSHA Act by requiring another party to perform them.

In most cases, the host employer is responsible for site-specific training and the staffing agency is responsible for generic safety and health training. It is the responsibility of both the staffing agency and the host employer to review applicable OSHA standards, know the specific training requirements, and determine and agree upon the generic will provide to temporary workers and the site-specific training requirements that the host employer will provide. The training goal is to ensure that workers know how to do their work safely, can identify hazards, and understand control and protective measures.

Under OSHA's Recordkeeping Requirement both the staffing agency and the host employer are responsible for ensuring that the temporary employees are involved in the recordkeeping system by training temporary employees on the reporting process for all work-related injuries or illnesses and setting up a system for the temporary workers to report work-related injuries and illnesses promptly. See 29 CFR 1904.35(b). The employer that supervises employees on a day-to-day basis (usually the host employer) must record the work-related injuries and illnesses of the temporary workers. See 29 CFR 1904.31 (b)(2). If the staffing agency is not the employer responsible for recording the work-related injuries or illnesses, the staffing agency should implement a mechanism for the temporary employees to report incidents to the staffing agency. Neither the host employer nor the staffing agency should have any policies or programs that discourage the reporting of injuries, illnesses, or hazard.

Host Employer Responsibilities

The host employer is usually responsible for site-specific training because it is often in the best position to provide such training. The host employer generally controls the details, means, methods and processes by which the work is to be accomplished. In addition, the host employer is most familiar with the hazards of the specific job tasks, machinery, equipment, and processes of its worksite and understands the training necessary to protect workers. Continue page 4...



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Staffing Agency Responsibilities

The staffing agency is usually responsible for providing generic safety and health training so that its workers have a basic ability to identify hazardous situations, report hazards, injuries and illnesses, and understand their rights if confronted with a hazardous situation at the worksite. The staffing agency is responsible for ensuring that employees receive proper site-specific training. In order to fulfill this obligation, the staffing agency must have a reasonable basis for believing that the host employer's training adequately addresses the potential hazards to which employees will be exposed at the host employer's worksite. If the staffing agency has reason to believe the site-specific training is not adequate, it should inform the host employer and collaboratively determine and provide adequate training, provide the training itself, or remove its workers from the host employer's worksite. While the staffing agency may have a representative at the host employer's worksite, the presence of that representative does not transfer responsibilities for site-specific training to the staffing agency.

The staffing agency may agree to provide site-specific training if it is familiar with the hazards of the worksite. The staffing agency may choose to conduct a walkthrough of the worksite to identify tasks that that temporary employees will perform and the hazards of those tasks. However, the employer originally responsible for the particular training (determined by supervision and control over the workers hazards) must still ensure that the workers complete training and that the training is adequate before work begins.

Disclaimer: This bulletin 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 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 OSH 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. For more information please visit www.osha.gov.

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