

American Staffing Association

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VIA ELECTRONIC SUBMISSION

Edmund C. Baird
Associate Solicitor of Labor for Occupational Safety and Health
U.S. Department of Labor
Occupational Safety & Health Administration
zzSOL-Covid19-ETS@dol.gov

Re: OSHA COVID-19 Emergency Temporary Standard, Docket No. OSHA-2020-0004

Dear Mr. Baird:

These comments on the COVID-19 healthcare emergency temporary standard are submitted by the American Staffing Association (ASA), which represents the U.S. temporary and contract staffing industry.

The staffing industry plays a critical role in the nation's economy, employing approximately 16 million temporary and contract workers annually. Staffing agencies employ and place workers on temporary assignments in every job category in every industry—including essential industries such as healthcare. Hospitals and health care facilities turned to temporary workers throughout the pandemic and are continuing to do so at increasing rates, and temporary healthcare workers will be critical to the nation's recovery in the coming months and years.

ASA shares OSHA's goal of improving worker safety and well-being during the pandemic and the related national health and safety crisis. ASA enjoys a long-standing relationship with OSHA through its formal alliance, originally signed in 2014 and renewed in 2016, and has worked collaboratively with OSHA on the Temporary Worker Initiative (TWI), the TWI Bulletins, and other significant matters involving temporary worker safety.

Staffing agencies and the host employers to whom the agencies supply temporary workers generally are joint employers. We think it is critically important to expressly refer to such relationships in the emergency temporary standard. In that regard, we make the following specific recommendations:

- As a threshold matter, the definitions in the emergency standard should reference joint-employment relationships—and provide that both the primary employer staffing agency and host employer must protect employees from safety and health hazards and comply with OSHA regulations. Many of the provisions of the emergency standard impact temporary workers at host employer job sites, and failure to expressly reference joint employment relationships in the definitions could leave these temporary workers vulnerable.
- Similarly, the emergency standard should refer to and cite relevant TWI Bulletins in connection with any required COVID job hazard training and virus mitigation protocols such as PPE like respirators, solid barriers, etc.

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Host employers should provide site-specific hazard training, while staffing agencies should conduct general awareness COVID training. Staffing agencies do not have the expertise to recognize or address the worksite employer's hazards, which is why they provide general awareness training *only*, and ensures that the host employer provides the PPE deemed adequate for the worksite hazards.

To avoid confusion and to ensure that the proper party provides the relevant training and virus mitigation protocols, we recommend the emergency standard include the following language from OSHA's Temporary Worker Initiative (TWI) resources:

- "Staffing agencies should provide general safety and health training applicable to different occupational settings, and host [worksite] employers provide specific training tailored to the particular hazards at their workplaces." <https://www.osha.gov/Publications/OSHA3735.pdf> (Protecting Temporary Workers)
- "The host employer will usually have the primary responsibility for selecting, providing and ensuring the use of adequate PPE for the processes or operations to which workers have been assigned... staffing firms must take steps to ensure the host employer conducts the appropriate hazard assessment and provides adequate PPE." <https://www.osha.gov/sites/default/files/publications/OSHA3780.pdf> (Personal Protective Equipment)

See also:

- <https://www.osha.gov/sites/default/files/publications/OSHA3859.pdf> (Safety and Health Training)
- <https://www.osha.gov/sites/default/files/publications/OSHA3952.pdf> (Respiratory Protection)

The emergency standard should incorporate and apply these same well-established and recognized principles to COVID-specific hazard training and mitigation protocols.

- Regarding the § 1910.502(l)'s requirement that employers notify employees of COVID-19 exposure in the workplace within twenty-four hours, it should be the responsibility of the host employer to notify the affected temporary workers exposed at the host employer worksite. This is because the host employer is the only party in the position to know which workers were potentially exposed based on the time and worksite location, and which workers were not wearing respirators or required PPE. The staffing agency is unable to make those determinations or answer follow-up questions, and even if the host employer shares the information with the agency to pass along to their temporary workers, it likely could not do so within the twenty-four hours prescribed by the Section – thus putting the workers, and their subsequent patients, at risk. Clarifying that the host employer is the proper party to conduct notification also decreases the risk of double reporting, and the potential for needless, duplicate investigations at a time when OSHA's resources are significantly constrained.
- In addition to the duty to notify temporary workers exposed to COVID-19 at the host employer worksite, host employers should also be required to share the same information with the staffing agency so the agency can ensure proper contact tracing, testing, and follow up with their temporary workers as needed. *See* OSHA's "Protecting Temporary Worker" publication: "[i]f 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." To the extent employee health and/or personal information is shared between the staffing agency and host employer for reporting purposes, the emergency standard should make clear that the sharing of such information would not violate state privacy laws.
- Similarly, as it relates to temporary workers, host employers should be responsible for complying

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with the § 1910.502(r)'s requirement that employers report to OSHA each work-related COVID-19 fatality within eight hours of learning about the fatality, and each work-related COVID-19 in-patient hospitalization within twenty-four hours. Imposing this requirement would be analogous to the host employer's obligation to report injuries and illnesses of temporary workers it *supervises* on its OSHA 300 Logs (Log of Work-Related Injuries and Illnesses). *See* 9 CFR 1904.31(a)-(b). Therefore, the emergency standard should make clear that the host employer must report work-related COVID-19 fatalities or in-patient hospitalizations of *any worker it supervises*, including temporary workers.

Thank you for your consideration.

Sincerely,

Brittany Sakata, Esq.
Associate General Counsel