

July 15, 2014

MEMORANDUM FOR: REGIONAL ADMINISTRATORS

THROUGH: DOROTHY DOUGHERTY
Deputy Assistant Secretary

FROM: THOMAS GALASSI, DIRECTOR
DIRECTORATE OF ENFORCEMENT PROGRAMS

SUBJECT: Policy Background on the Temporary Worker Initiative

On April 29, 2013, OSHA launched the Temporary Worker Initiative (TWI) in order to help prevent work-related injuries and illnesses among temporary workers.¹ The purpose of this initiative is to increase OSHA's focus on temporary workers in order to highlight employers' responsibilities to ensure these workers are protected from workplace hazards.

As detailed in the documents posted on our website (www.osha.gov/temp_workers), temporary workers are at increased risk of work-related injury and illness. In recent months, OSHA has received and investigated many reports of temporary workers suffering serious or fatal injuries, some in their first days on the job. Numerous studies have shown that new workers are at greatly increased risk for work-related injury, and most temporary workers will be "new" workers multiple times a year. Furthermore, as the American economy and workforce are changing, the use of temporary workers is increasing in many sectors of the economy.

OSHA compliance officers regularly encounter worksites with temporary workers. This memorandum is being sent to remind OSHA field staff of the Agency's long standing general enforcement policy regarding temporary workers. Additional enforcement and compliance guidance will be issued in the near future.

For the purposes of the TWI, "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 will consider the staffing agency and host employer to be "joint employers" of the worker in this situation. 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 statutory and regulatory requirements. For example, the staffing agency often controls a worker's paycheck and selects the host employer location where the worker will be sent. The host employer, in turn, assigns the particular work to be done each day and controls operations in the physical workplace.

As joint employers, both the host employer and the staffing agency have responsibilities for protecting the safety and health of the temporary worker under the OSH Act. In assessing compliance in any inspection where temporary workers are encountered, compliance officers must consider whether each employer has met its responsibility.

Identifying Employer Responsibilities. It is a fundamental principle that temporary workers are entitled to the same protections under the OSH Act as all other covered workers. The staffing agency and host employer must work together to ensure that OSH Act requirements are fully met

and that the temporary worker is provided a safe workplace. This requires effective initial and follow-up communication and a common understanding of the division of responsibilities for safety and health. OSHA compliance officers should review any written contract(s) between the staffing agency and the host employer and determine if it addresses responsibilities for employee safety and health. It should be understood, however, that the contract's allocation of responsibilities may not discharge either party's obligations under the Act.

The extent of the obligations each employer has will vary depending on workplace conditions and may be clarified by their agreement or contract. Their duties will sometimes overlap. The staffing agency or the host may be particularly well suited to ensure compliance with a particular requirement, and may assume primary responsibility for it. For example, staffing agencies might provide general safety and health training applicable to many different occupational settings, while host employers provide specific training tailored to the particular hazards at their workplaces. If the staffing agency has a long-term, continuing relationship with the temporary worker, it may be best positioned to comply with requirements such as audiometric testing or medical surveillance. The host employer, in turn, would be the primary party responsible for complying with workplace-specific standards relating to machine guarding, exposure to noise or toxic substances, and other workplace-specific safety and health requirements.

As noted above, although the host employer typically has primary responsibility for determining the hazards in their workplace and complying with worksite-specific requirements, the staffing agency also has a duty. Staffing agencies must ensure they are not sending workers to workplaces with hazards from which they are not protected or on which they have not been trained. Agencies need not become experts on all potential hazards at the host's workplace, but nevertheless have a duty to diligently inquire and determine what, if any, safety and health hazards are present at their client's workplaces. For example, if a staffing agency is supplying workers to a host where they will be working in a manufacturing setting using potentially hazardous equipment, the agency should take reasonable steps to identify any hazards present, to ensure that workers will receive the required training, protective equipment, and other safeguards, and then later verify that the protections are in place.

Prior to accepting a new host employer as a client, or a new project from a current client, both parties should jointly review the task assignments and any job hazard analyses in order to identify and eliminate potential safety and health dangers and provide the necessary protections and training for workers. If information becomes available that questions the adequacy of 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 address 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, if feasible, an inspection of the workplace to conduct its own hazard assessment or to ensure implementation of the host employer's safety and health obligations.

It is incumbent on both employers to communicate with each other when a worker is injured, and to determine what measures are to be implemented to prevent future injuries from occurring. Communication between the host employer and staffing agency is of fundamental importance in

this regard. For example, if a temporary worker is injured at a host employer worksite, the host employer should inform the staffing agency of the injury, and the staffing agency, in turn, should follow-up about preventive actions taken. Similarly, if a staffing agency learns of a temporary worker's injury (through, for example, the filing of a workers' compensation claim), the staffing agency should inform the host employer to help ensure that preventive measures are taken before additional workers are injured.

When investigations reveal a temporary worker exposed to a violative condition, and the worker is considered to be employed by both a staffing agency and a host employer, OSHA will consider issuing citations to either or both of the employers, depending on the specific facts of the case. This will require Area Offices to make a careful assessment of whether both employers have fulfilled their respective compliance responsibilities in each individual case. These inspections are considered high priority and early consultation between OSHA and SOL is essential to facilitate case development.

Temporary workers have the same rights and protections against retaliation as all other covered workers. Given the importance of communication between employers about the presence of hazards, it is also incumbent on both employers to take necessary steps to ensure that temporary workers are aware of their rights and responsibilities under the OSH Act. Section 11(c) of the OSH Act protects temporary workers who report injuries and illnesses or complain to their employer, OSHA, or other government agencies about unsafe or unhealthful working conditions in the workplace. Temporary workers have the right to report injuries or illnesses or complain to both the host employer and the staffing agency without fear of retribution. Both the staffing agency and the host employer should inform temporary employees how to report injuries and illnesses and include training on the employee's right to report workplace safety concerns. If the CSHO finds evidence of retaliation by either the host employer or the staffing agency for reporting an injury or illness, the CSHO will inform the worker of his/her right to file a retaliation complaint with OSHA.

When to Open an Inspection with the Staffing Agency. When a temporary worker is exposed to a violation, the CSHO should make inquiries into the staffing agency's actual or constructive knowledge of the worksite's hazards - whether the staffing agency knew, or with the exercise of reasonable diligence, could have known about the hazards. The CSHO should review such factors as the terms of the staffing agency-host employer contract, the interaction and communication between the staffing agency and the host employer, the staffing agency's contact with its temporary workers, whether those workers have had any complaints or concerns and whether they have made those concerns known to the employers (and if not, why not).

As noted above, the staffing agency has a basic duty to inquire into the conditions at the host worksite. The decision to open an inspection with the staffing agency is not dependent upon whether or not a staffing agency management representative is on-site. If a temporary worker is or could be exposed to a serious hazard or if the staffing agency does not appear to have taken any actions to learn of the conditions at the host's worksite, then the CSHO should initiate an inspection with the staffing agency. In all other instances, Area Directors may decide, based upon the evidence found during the inquiries, whether to open an inspection with the staffing agency.

Resources. Determining the responsibilities of host employers and staffing agencies will be highly fact-specific. To assist the field in such cases, the Directorate of Enforcement Programs is preparing a series of bulletins on various aspects of the TWI. The first bulletin addresses recordkeeping requirements and can be found on our Temporary Worker webpage. The second bulletin will address whistleblower protection rights. Other topics may include personal protective equipment, training, hazard communication, duty-to-inquire, hearing conservation programs, exposures to heat, and powered industrial trucks. A compliance directive is also planned.

In addition, a large number of resources devoted to the TWI have been assembled on OSHA's [internal website](#). These include existing interpretive guidance and compliance directives related to temporary worker issues on recordkeeping, hazard communication, bloodborne pathogens, and other standards. More resources will be added in the future.

Conclusion. Too often in recent months, it has been OSHA's sad duty to investigate fatalities and injuries involving temporary workers who were not given the necessary safety and health protections required under the Act. In the TWI, we are attempting to ensure that all employers, whether host or staffing agency, individually and collaboratively, fulfill their duties to their workers, so that at the end of the shift of every work day, all temporary workers in the United States can return home safely.

As noted above, further guidance in the form of bulletins and a compliance directive will be forthcoming. Should you have any further questions, please contact Mary Lynn in the Office of Chemical Process Safety and Enforcement Initiatives, at lynn.mary@dol.gov.

cc: Jim Maddux, Director, DOC
Doug Kalinowski, DCSP

1 See OSHA New Release 13-800-NAT, [OSHA launches initiative to protect temporary workers](#), April 29, 2013