



## **A Case Study on the Shared Responsibility of Staffing Agencies and Host Employers for Temporary Worker Safety—Personal Protective Equipment and Injury Recordation**

### **Introduction**

The Occupational Safety and Health Administration (OSHA), American Staffing Association (ASA), and National Safety Council (NSC), are committed to promoting and furthering the safety and health of temporary workers assigned by staffing agencies to host employers. To that end, through their respective alliances with OSHA, ASA and NSC developed the following fictional case study that is generally based on citations issued by OSHA in connection with temporary workers' on-the-job injuries. The case study provides practical information to allow staffing agencies and host employers to better protect temporary workers and understand who is responsible for recording temporary worker injuries on the OSHA 300 recordkeeping log.

### **What Happened?**

A staffing agency assigned a temporary worker to a host employer's worksite to perform welding work indoors using a portable generator and portable welding equipment. The equipment emitted welding fumes during use.

The host employer supervised and controlled the temporary worker's daily work activities and provided him with an air-purifying respirator. Neither the staffing agency nor the host employer conducted a medical evaluation to determine the worker's ability to use the respirator. In addition, the temporary worker was not informed by either party about the required usage of appropriate hand protection, nor trained on the proper use of the respirator.

Subsequently, the worker burned his hand while using the welding equipment. The burn was serious and required that the worker be admitted to the hospital for in-patient treatment for one day. Although the parties' written contract required the staffing agency to record temporary worker injuries on the OSHA 300 log, neither the agency nor host employer recorded the injury on their respective logs. Also, neither the agency nor host employer reported the work-related in-patient hospitalization to OSHA.

### **What OSHA Did and Why**

After an investigation, OSHA determined that the host employer was in the best position to provide the necessary PPE and training, as the host employer was most familiar with the equipment being used and controlled the conditions of the worksite. Therefore, the host employer was responsible for the violations related to the temporary worker's personal protective equipment (PPE). OSHA cited the host employer for failing to conduct a medical evaluation to determine the temporary worker's ability to use the respirator and train the worker on its proper use. OSHA also cited the host employer for failing to provide proper PPE for hand protection.

Because the host employer supervised the temporary worker, OSHA cited the host employer for failing to record the injury on the host employer's OSHA 300 log. OSHA also cited the host employer for failing to report the work-related in-patient hospitalization to OSHA within 24 hours of learning about it.

OSHA cited the staffing agency for failing to perform a pre-assignment assessment of the workplace to determine whether hazards were present that required use of PPE.

### **Staffing Agency and Host Employer Responsibilities**

In a temporary employment arrangement, the staffing agency and host employer typically are joint employers and thus have a shared responsibility for temporary worker safety and health; this means that, with respect to safety, host employers must treat temporary workers the same as they would their own internal workers. Staffing agencies must inquire into the conditions of the workers' assigned workplaces and verify that the host employer has fulfilled its responsibilities for a safe workplace. Staffing agencies are generally responsible for general safety and health training, while host employers are generally responsible for site-specific safety training, including training on any hazardous chemicals that the temporary worker will be exposed to at the worksite. Host employers are generally also responsible for providing any required PPE and training temporary workers on its proper use, for recording temporary workers' injuries and illnesses on their OSHA 300 logs, and for reporting to OSHA any temporary worker fatality, hospitalization, amputation, or eye loss. The staffing agency and host employer should work together to set up a way for workers to promptly report work-related injuries and illnesses and should inform workers how to report injuries and illnesses.

These obligations are based on OSHA's view that whoever is in the best position to ensure the safety and health of temporary workers has the obligation to do so. Thus, when host employers control workplace activities, conditions, and related hazards, including instructing temporary workers on how to do their jobs and controlling the means and manner of their work, host employers are responsible for furnishing and training on PPE, regardless of the length of the temporary workers' assignments. Staffing agencies, in turn, are responsible for ensuring that the host employer conducts an appropriate hazard assessment and provides adequate PPE and associated training. For additional information, see OSHA's Temporary Worker Initiative [Bulletin No. 2: Personal Protective Equipment \(osha.gov/Publications/OSHA3780.pdf\)](https://www.osha.gov/Publications/OSHA3780.pdf).

Host employers that supervise temporary workers are responsible for recording temporary workers' injuries on their OSHA 300 logs, regardless of what their contract with their staffing agency says; the host employer cannot insulate itself from potential liability through contracts or other means. Injuries and illnesses should be recorded on only one employer's injury and illness log. For additional information, see 29 CFR 1904.31(b)(4) and OSHA Temporary Worker Initiative [Bulletin No. 1: Injury and Illness Recordkeeping Requirements \(osha.gov/temp\\_workers/OSHA\\_TWI\\_Bulletin.pdf\)](https://www.osha.gov/temp_workers/OSHA_TWI_Bulletin.pdf).

Host employers that supervise temporary workers are also responsible for reporting to OSHA, within the required timeframes, any work-related incident that results in a temporary worker fatality, in-patient hospitalization, amputation, or loss of an eye. For additional information, see "[Year One of OSHA's Severe Injury Reporting Program: An Impact Evaluation](https://www.osha.gov/injuryreport/2015.pdf)" ([osha.gov/injuryreport/2015.pdf](https://www.osha.gov/injuryreport/2015.pdf)).

### **What Can Staffing Agencies and Host Employers Do to Avoid Similar Situations?**

Prior to the start of a temporary staffing relationship, the staffing agency and host employer should determine which party will control workplace activities, conditions, and related hazards, including instructing temporary workers on how to do their jobs and controlling the means and manner of their work, and thus be in the best position to provide required safety and health protections. The staffing agency and host employer should then enter into a written staffing agreement<sup>1</sup> that specifically addresses each party's safety and health responsibilities,

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<sup>1</sup> To help staffing agencies and host employers clearly specify and delineate their respective workplace safety obligations under the law and applicable regulations, ASA has published a [general staffing agreement that includes highlighted safety-specific clauses \(americanstaffing.net/staffing-law-advocacy/legal-resources/model-staffing-contracts/general-staffing-model-contract/general-staffing-agreement-safety-specific-clauses\)](https://americanstaffing.net/staffing-law-advocacy/legal-resources/model-staffing-contracts/general-staffing-model-contract/general-staffing-agreement-safety-specific-clauses). While not necessarily appropriate for every

including which party is responsible for providing PPE and training on the use of the equipment. The staffing agreement should also identify the supervising employer and state that this employer is responsible for maintaining the temporary worker's injury and illness records and reporting any fatality, hospitalization, amputation, or eye loss to OSHA.

Each party should adopt procedures to ensure that all safety obligations are carried out with respect to temporary workers. For example, the staffing agency should maintain regular communication with the host employer and temporary workers to confirm that training has been provided and ensure that the temporary worker's job responsibilities have not been changed by the host employer. Regular communication with the host employer should also include reviews of the effectiveness of any Safety and Health Management Systems (SHMS) employed by the host employer, injury and illness statistics, and safety and regulatory compliance.

If the host employer learns that a temporary worker has suffered a workplace injury, the host employer should promptly notify the staffing agency. Equally, if a staffing agency learns that a temporary worker suffered a workplace injury, it should inform the host employer promptly. If the injury is severe, leading to hospitalization, an amputation, eye loss, or a fatality, then the employer that provides the day-to-day supervision of the worker (usually the host employer) should promptly notify OSHA.

### **What a Host Employer's Management Should Know about Temporary Workers**

Managers are responsible for their workers' safety, including any temporary workers under their control, and the host employer should treat the temporary worker the same as it treats its existing workers with respect to worker safety and health.

Host employers should take the following steps to protect the safety and health of their temporary workers:

- Train supervisors on OSHA requirements for safety of temporary workers and the allocation of safety responsibilities in any executed staffing agreements
- Ensure that supervisors know how to manage all workers when unsafe behaviors happen
- Maintain regular communication with a temporary worker's staffing agency
- Ensure that temporary workers are accounted for and specifically referred to in a host employer's safety and health policies
- Revise, review and update (when necessary) the procedure and risk assessments/job safety analysis for the activities taking place on the host employers' premises, which should be documented and shared with the staffing agency
- Review the control methods provided and follow the hierarchy of risk control by preferably using engineering or administrative controls rather than PPE. Where PPE is provided, ensure there is a PPE program in place. For additional information, see [OSHA's Safety and Health Management Systems eTool](#) and Hierarchy of Controls [chart](#).

### **What Workers Should Know**

All workers, including temporary workers, are protected under workplace safety laws and entitled to a safe workplace. Temporary workers must be provided with the same training, including on hazard protection and the use of PPE, as all other workers. As joint employers, both the host employer and staffing agency are responsible for ensuring that there is a PPE program in place that includes training for all workers on the correct use of PPE, fit testing where applicable, and maintenance and replacement of devices as required. The

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staffing arrangement, the clauses are particularly suited for construction, industrial, and other safety-sensitive sectors of the staffing industry. Although OSHA cannot endorse the clauses, they were developed by ASA based on OSHA's published [recommended practices \(www.osha.gov/Publications/OSHA3735.pdf\)](http://www.osha.gov/Publications/OSHA3735.pdf).

host employer will usually have the primary responsibility for selecting, providing and ensuring the use of adequate PPE. The staffing agency will usually have the responsibility for providing generic training and ensuring that the host employer meets its responsibilities.

Temporary workers are also protected under the whistleblower protection provisions of the Occupational Safety and Health Act from retaliation by their host employer or staffing agency for engaging in protected activity, such as reporting injuries or raising safety concerns with their employer or OSHA. For additional information, see OSHA's Temporary Worker Initiative [Bulletin No. 2: Whistleblower Protection Rights](#).

**Additional Information:**

OSHA Temporary Worker Initiative [Bulletin No. 1: Injury and Illness Recordkeeping Requirements: osha.gov/temp\\_workers/OSHA\\_TWI\\_Bulletin.pdf](#)

OSHA Temporary Worker Initiative [Bulletin No. 2: Personal Protective Equipment: osha.gov/Publications/OSHA3780.pdf](#)

OSHA and NIOSH [Recommended Practices: Protecting Temporary Workers: osha.gov/Publications/OSHA3735.pdf](#)

[OSHA Protecting Temporary Workers Web Page: osha.gov/temp\\_workers/index.html](#)

[Year One of OSHA's Severe Injury Reporting Program: An Impact Evaluation: osha.gov/injuryreport/2015.pdf](#)

Under the Occupational Safety and Health Act, [employers are responsible](#) for providing a safe and healthy workplace and [workers have rights](#). OSHA can help answer questions or concerns from employers and workers. OSHA's [On-site Consultation Program](#) offers free and confidential advice to small and medium-sized businesses, with priority given to high-hazard worksites. For more information, contact your [regional or area OSHA office](#), call 1-800-321-OSHA (6742), or visit [www.osha.gov](http://www.osha.gov).

Through OSHA's Alliances with the American Staffing Association (ASA) and National Safety Council (NSC), ASA and NSC developed this case study for informational purposes only. It does not necessarily reflect the official views of OSHA or the U.S. Department of Labor.

The case study is informational in nature and does not constitute a regulation or legal standard and should not be construed as such. Staffing agencies' and host employers' respective legal obligations will vary depending on facts, circumstances, and jurisdiction. Staffing agencies and host employers should consult with qualified legal counsel regarding their safety responsibilities under applicable laws and regulations.