Temp Providers, Non Routine Workers and Safety

Insights
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I write a fair amount about employers' duties to ensure that their workers classified as "temporary employees" be treated the same with regard to safety as their full time or so-called "permanent" employees. Hazards do not distinguish between an employee's status. A fall hazard or unguarded chain will harm a temporary employee as much as it will harm a full time employee. Therefore, employers should involve these non-routine employees in the same safety meetings and training as full time employees. Temps should receive the same PPE as full time employees. If the temps are present long enough, they must participate in hearing protection and respiratory protection programs. This approach combines common sense, ethics and OSHA compliance.

Manufacturers Can Protect Their Workers, but Can Temporary Providers Meet OSHA's Expectations?

If OSHA has their way, providers of temporary employees will have a near impossible burden of ensuring the safety of the employees they place. Because of the Department of Labor's praise of Wage Hour Director David Weil's book, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done*, I can't help but wonder if OSHA is trying to make it difficult for Temp providers. The Administration and the U.S. DOL clearly dislike the ever-increasing use of non-routine employees and of supply chain management in general. Read this recent DOL Blog post. I share a few of the same concerns, but this political persuasion should not be used to bludgeon reputable temporary employee providers out of business. Can the provider meet obligations on a temp provider that wise host employers already manage:

> ***Under the terms of the agreement, Marathon will have a qualified safety and health professional review and update a checklist to address foreseeable safety and health concerns at client workplaces. The list will be used to conduct initial and periodic safety and health inspections or audits at client work sites to ensure working conditions meet OSHA standards***

So, consider this June 16 OSHA News Release and consider whether a temporary provider meet the obligations set out in OSHA's press release.

> **Temporary staffing company agrees to implement**
> **changes to protect employees at all its work sites**
> ***'This is . . . what suppliers of temporary employees should be doing': OSHA***

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BOSTON – A Tyngsboro company that supplies temporary employees to businesses has agreed to enhanced workplace safety and health protections for workers it places in all those businesses in a settlement agreement with the U.S. Department of Labor.

The department's Occupational Safety and Health Administration cited Marathon Staffing Services Inc. for a serious violation in December 2014 for not providing hearing tests for its employees exposed to high noise levels while working on assignment at Concrete Systems Inc. in Hudson, New Hampshire.

Under the terms of the agreement, Marathon will have a qualified safety and health professional review and update a checklist to address foreseeable safety and health concerns at client workplaces. The list will be used to conduct initial and periodic safety and health inspections or audits at client work sites to ensure working conditions meet OSHA standards.

Marathon will also provide comprehensive safety and health training for its account executives and sales representatives. The company will develop, with each of its clients, written contracts specifying their respective responsibilities to develop safety and health programs applicable to each workplace where Marathon will supply temporary employees. These terms echo OSHA's recommended practice that temporary staffing agencies and host employers define and implement their respective roles designed to ensure compliance with applicable OSHA standards.

"This is an example of what suppliers of temporary employees should be doing," said Kim Stille, OSHA's regional administrator for New England. "Both host employers and staffing agencies have critical roles in complying with workplace health and safety requirements. They share responsibility for ensuring worker safety and health. Each employer should consider hazards it can prevent and correct, and no employer - whether a temporary staffing agency or a client company - should ever send an employee into harm's way."

> ***"This settlement ripples beyond this one case. It is designed to enhance safety and health for hundreds of Marathon employees at numerous work sites in several states. Other suppliers and employers of temporary workers can and should take heed and ensure that all employees - permanent, short-term or day laborer - work in an environment that enables them to come home each day safe and healthy," said Michael Felsen, the department's.***
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> In April 2013, OSHA announced an initiative to improve workplace safety and health for temporary workers, who are at increased risk of work-related injury and illness. The initiative includes outreach, training and enforcement to ensure that temporary workers are protected in their workplaces. OSHA and the National Institute for Occupational Safety and Health have issued a "Recommended Practices*" publication that focuses on ensuring that temporary workers receive the same training and protection that permanent employees receive.

If you are providing non routine workers, review your operations and determine whether you could satisfy similar safety obligations, and if so, what steps are required.

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The Administration is Challenging More Practices than Just temporary Employees

As a closing admonition, I disagree with Director Weil's regulatory and union-driven solutions, but his book does outline challenges in the workforce which must be addressed. As an example, look at yesterday's Wall Street Journal Article on California finding that Uber drivers are not independent contractors or the Journal's far reaching January 27, 2015 analysis:

> **On-Demand Workers: 'We Are Not Robots'**
> **Is Technology Liberating or Squeezing the New Class of Freelance Labor?**
> Lawsuits, protests and forums suggest flexible laborers aren't very enthusiastic about the new work model at the likes of Uber and Handybook. WSJ's Lauren Weber reports. Photo: Annie Tritt for *The Wall Street Journal*
> By Lauren Weber and Rachel Emma Silverman
> Companies like Uber Technologies Inc., cleaning service Handybook Inc., and odd-job facilitator TaskRabbit have captured the imagination of consumers and investors because their apps turn a smartphone into a remote control capable of summoning a driver, housekeeper or errand-doer.
> The leaders of those companies, which rely on freelance labor, describe their workers as micro-entrepreneurs at the vanguard of a new, flexible future of work in which people only do the jobs they like, when they like.
> Yet a host of lawsuits, protests and forums organized by and for workers suggest that many flexible laborers feel less enthusiastic about the new model of work. Current and former workers for Uber, Amazon Inc.'s Mechanical Turk and Handybook, better known as Handy, say on-demand work platforms give them little control over the terms of their labor, and complain that the contracts they're required to accept force them to shoulder personal and financial risk without the returns or advantages they'd hoped for.
> The rumblings of discontent—including a letter-writing campaign by Mechanical Turk workers to Amazon chief executive Jeff Bezos—don't yet pose an existential threat to companies using on-demand labor, but they highlight the ambivalence that many workers feel toward the platforms that supply or supplement their income.
> "Many people are really liberated by the income they are able to earn and the flexibility over their schedules," says Shelby Clark, the chief executive of Peers, a membership organization of roughly 250,000 independent contractors for on-demand firms. "At the same time, working in the sharing economy can feel isolating and confusing."
> Click here to continue reading at the *Wall Street Journal*.

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