



STAFFING AGENCIES BEWARE: OSHA'S NEW POLICY MEMORANDUM HIGHLIGHTS OSHA'S ENFORCEMENT PRIORITIES WITH RESPECT TO TEMPORARY WORKERS.

Insights

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On July 15, 2014, Thomas Galassi, OSHA's Director of Enforcement Programs, released a memorandum addressed to all OSHA regional administrators regarding OSHA's Temporary Worker Initiative—a program developed to increase the agency's focus on the safety of temporary workers. The purpose of the memo was to clarify the responsibilities of staffing agencies and host employees and to remind OSHA field staff of the enforcement policy with respect to temporary workers.

Temporary workers are those hired, paid and supplied by a staffing company to perform work for a host employer. As the memorandum explains, both the staffing agency and the host employer are considered to be "joint employers," in that, each bears responsibility for protecting the worker from safety hazards at the work place. Consequently, both have a duty to act on behalf of the temporary employee, as OSHA will issue citations to one, or both, if an investigation reveals temporary workers were exposed to hazardous conditions.

The policy memo makes clear the obligations of the staffing agency and the host employer will vary depending on worksite conditions. Consequently, OSHA will engage in a "highly fact-specific analysis," to determine the responsibilities of both the staffing agency and the host employer.

Nevertheless, Galassi stressed staffing agencies have a basic duty to inquire into the conditions of the host employer worksite and must evaluate each worksite to determine if any health or safety hazards are present. OSHA inspectors were challenged to find whether the staffing agency had actual or constructive knowledge of the hazards the temporary worker was exposed to, and were directed to review such factors as the contracts and communications between joint employers, as well as the contact between the staffing firm and the temporary employees, to assess whether an investigation was warranted.

The issuance of the policy memorandum highlights one of OSHA's enforcement priorities in the immediate future. For instance, from June 9-30, 2014, OSHA announced citations against four host employers and seven staffing firms alone. One staffing agency was fined, even though the deceased worker was not supplied by the temporary agency. Meanwhile, four (4) staffing agencies were fined after the death of a worker at a distribution facility, and the host employer, the distribution facility, was not cited in this instance.

In light of OSHA's enforcement actions with respect to temporary employees, it is important for both host employers and staffing agencies to assess their obligations with respect to temporary workers to avoid costly civil penalties, and ultimately, work related injuries.

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