



OSHA Increases Focus on Safety for Temporary Employees

Insights

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In a recent memorandum from the national office to its Regional Administrators, OSHA set forth new issues that Compliance Officers should examine when they inspect worksites where temporary employees are working. The information to be documented includes determining whether the employees are exposed to conditions in violation of OSHA rules or other safety and health hazards and whether the employees received safety and health training “in a language and vocabulary they understand” as well as the supervising structure under which the temporary employees are reporting (i.e. who is supervising the temporary employees at the worksites).

Who falls under “Temporary Worker”?

The memorandum identifies temporary employees as “those who are paid by a temporary help agency, whether or not their job is temporary.” The memo instructs compliance officers that if there are temporary employees, the inspector should “document” the name and location of the employees’ staffing agencies.

In addition, inspectors should also record “the extent to which the temporary workers are being supervised on a day-to-day basis either by the host employer or the staffing agency.”

In addition, it is important to note that employees are not defined by OSHA based on who pays them. Instead, OSHA looks at whether there is an employer-employee relationship between the parties. Criteria OSHA uses to determine that relationship include:

- The nature and degree of control the hiring party asserts over the manner in which the work is done.
- The degree of skill and independent judgment the temporary employee is expected to apply.
- The extent to which the services provided are an integral part of the employer’s business.
- The right of the employer to assign new tasks to the employee.
- Control over when the work is performed and how long it takes.

The Reason Behind the Memorandum

According to OSHA, in recent months there have been a series of reports of temporary employees suffering serious injuries. In some cases, the host employer failed to provide safety training or, if some instruction was given, it inadequately addressed the hazard believing that the temporary employee agency was providing the appropriate safety and health training.

Because of the number of temporary employees being utilized in worksites throughout the country, and the recent increase in the number of severe incidents, OSHA stated they wanted to "... increase the unified effort using enforcement, outreach and training to assure that temporary workers are protected from workplace hazards."

OSHA's Plan for Temporary Employees

The memo calls on OSHA compliance officers to use a newly created code in the agency's information system to denote when temporary employees are exposed to safety and health violations and further directs investigators to review records and conduct interviews to assess whether temporary employees have received the required training in a language and vocabulary they can understand. In a statement announcing the new initiative, OSHA officials stated that the agency has also started working with the American Staffing Association and with employers that use staffing agencies to promote best practices to protect temporary employees from hazards on the job.

Conclusion

Any employer utilizing temporary employees must be aware that no matter what its contract states as to the temporary employee provider responsibility to conduct OSHA safety and health training, the host employer will still be responsible for ensuring that its temporary employees have been properly trained and aware of all safety and health hazards at the worksite. This is especially true if the host employer is supervising the temporary employees. Also, under the OSHA multi-employer citation policy, the host employer will not likely be considered the controlling employer and may be cited for safety and health violations created by the temporary employees. This is a complex issue and employees utilizing a temporary employee provider should look closely at the contract with the provider to ensure that it is indemnified for any safety or health violations created by the temporary employee provider.