

Safety Secrets for Managing the Temporary Workforce

Courtney M. Malveaux, Esq.

Jackson Lewis P.C. | Richmond

Courtney.Malveaux@jacksonlewis.com | (804) 212-2862

Objectives:

- ◆ Raise issues for discussion
- ◆ Spot issues for assistance



What We Will Cover

- ◆ Who are temporary employees?
- ◆ How OSHA's Temporary Worker Initiative applies to you
- ◆ Recommended Best Practices
- ◆ The legal relationship between staffing agencies and host employers
- ◆ Strategies for selecting safe and dependable staffing agencies and host employers

What We Will Cover (cont'd)

- ◆ Strategies for using temporary workers
- ◆ OSHA's new Recordkeeping Rule and how it applies to temporary worker arrangements
- ◆ OSHA citations in temporary worker arrangements
- ◆ OSHA guidelines on workplace safety best practices

Who Are Temporary Workers?

- ◆ Temporary employees (common in warehouses, manufacturing, retail)

are not



- ◆ Independent contractors (common in construction, IT, “gig” economy)

How Prevalent Are Temporary Workers?

- ◆ The temporary worker industry has grown 125% since 1990.
 - 861,000 temporary jobs added to the U.S. economy since August 2009.
 - Approx. 10 million people work in temporary jobs per year.

OSHA's Temporary Worker Initiative

- ◆ Launched in 2013
- ◆ Intended to help staffing agencies and host employers understand their responsibilities under the Occupational Safety and Health Act
- ◆ Includes data gathering, best practices and outreach material

OSHA's Temporary Worker Initiative

- ◆ OSHA's position is that both the host employer and the staffing agency are responsible for the safety of the temporary worker.
 - *Both* share control over worker.
 - *Both* share responsibility for worker.
 - *Both* must determine the conditions of employment.
 - *Both* are responsible for safety and health and complying with OSHA standards.
- ◆ Each employer should think about hazards it is in the better position to prevent and correct, and comply with OSHA standards.



OSHA's Recommended Best Practices

- ◆ The staffing agency and host employer should both:
 - Have a written safety and health program
 - Perform a hazard assessment of the worksite
 - Define the scope of work in the contract
 - Conduct new project orientation and safety training that addresses hazards to which temporary workers potentially may be exposed
 - Maintain communication with the worker and each other



So What Is the Legal Relationship Between the Staffing Agency and the Host Employer?

- ◆ Joint Control (employee and premises)
- ◆ Joint Responsibility
- ◆ Joint Liability



Strategies for Selecting a Staffing Agency

- ◆ Check certifications/licenses/expertise
- ◆ Do diligence in investigating reputation (agencies, litigation, trade/business associations)
- ◆ Get references from other host employers
- ◆ Examine internal policies (discipline, safety, criminal background checks)



Who Does This Involve?

Key departments to key in on your approach to using temporary staffing:

- ◆ HR
- ◆ Legal
- ◆ Production
- ◆ Maintenance
- ◆ Safety



What does this mean?

Be clear on:

- ◆ Roles
- ◆ Responsibilities
- ◆ Documentation
- ◆ Training
- ◆ Discipline
- ◆ Recordkeeping



Key Elements in Staffing Agreements

- ◆ Control
- ◆ Insurance
- ◆ Certifications
- ◆ Harassment, injury and incident reporting
- ◆ OSHA recording and reporting
- ◆ Exculpatory clauses
- ◆ Model language



Setting Safety Expectations

- ◆ Certifications/licenses/expertise
- ◆ Regular monitoring/supervision
- ◆ Actual control
- ◆ Employee discipline
- ◆ Medical intervention plans
- ◆ Safe premises and hazard notification/abatement



Documentation to Require

◆ Insurance

- Obtain and verify Certificate of Insurance
- Consider adding yourself as an additional insured

◆ Licensure/certification



Strategies for Handling Temporary Workers

- ◆ Prohibit third-party harassment
- ◆ Provide them all policies and necessary training
- ◆ Have them report harassment, injuries and incidents to host employer and staffing agency



A Quick Primer on OSHA's Recordkeeping Rule

- “Improve tracking of workplace injuries and illnesses:”
 - Rule finalized and challenged
 - House of Representatives passed bill to revoke
 - New requirements for the electronic submission of injury and illness information to OSHA that the agency already requires employers to keep.
 - OSHA will make the information publicly available on its website and create a searchable online database.

Recordkeeping Rule Requirements

- ◆ Require employers to inform employees of their right to report injuries and illnesses.
- ◆ Require injury and illness reporting requirements established by employer be reasonable and not unduly burdensome.
- ◆ Prohibit employers from taking ***adverse action*** against employees for reporting injuries and illnesses:
 - *Post-accident drug testing*
 - *Safety incentive programs*

How Does the Recordkeeping Rule Apply to Temporary Workers?

- ◆ Employers must record the injuries and illnesses of temporary workers if they supervise such workers on a day-to-day basis.
- ◆ Day-to-day supervision occurs when “... the employer supervises the details, means, methods and processes by which the work is to be accomplished.”
- ◆ Procedures must be established for employees to report injuries and illnesses.
- ◆ Information about injuries and illnesses should flow between the host employer and staffing agency.

OSHA Citations in Temporary Worker Arrangements

- ◆ 2016: Ohio auto parts manufacturer fined \$3.4 million for exposing temporary workers to multiple Lock Out/Tag Out, machine guarding and other hazards, and for inadequate training.
- ◆ 2015: Austin manufacturer fined \$56,000 and temp agency fined \$7,000 for amputation due to machine guarding hazard.
- ◆ 2014: San Antonio food processor fined \$76,000 and staffing agency fined \$6,000 for exposure to hazardous chemicals and training deficiencies.



OSHA Guidance on Preventing Safety-Related Liability

◆ Management Leadership:

- Top management demonstrates its commitment to continuous improvement in safety and health, and communicates that commitment to workers and sets program expectations and responsibilities.

◆ Worker Participation:

- Workers are involved in all aspects of the safety and health program, including identifying and reporting hazards, participating in investigation incidents, and tracking progress on program implementation.

Preventing Safety-Related Liability (cont'd)

- ◆ Hazard Identification and Assessment:
 - Procedures are put in place to continually identify workplace hazards and evaluate risks through initial and periodic assessments and inspections.

- ◆ Hazard Prevention and Control:
 - Processes are developed that ensure controls are implemented, the effectiveness of those controls is verified and progress on controlling hazards is tracked.

Preventing Safety-Related Liability (cont'd)

◆ Education and Training:

- All workers, including temporary workers, are trained on how to carry out the responsibilities assigned to them under the program, recognize hazards and implement control measures.

◆ Program Evaluation and Improvement:

- Processes are established to monitor program performance and identify deficiencies and opportunities for improvement, and take actions necessary to improve the program.

Questions?



Courtney M. Malveaux

Principal, Jackson Lewis P.C.
Richmond, VA

(804) 212-2862

Courtney.Malveaux@jacksonlewis.com

Represents Employers Nationally In:

- OSHA Citations
- Employment Matters
- Government Relations

Regulatory Background:

- Virginia Labor Commissioner through October 2013
- National Association of Governor Labor Officials (Past President)
- Virginia Safety and Health Codes Board (Industrial Employer Representative)