

Temporary Workers at VPP Sites

Brian Bennett, CSP
Norman R Deitch, OHST
National VPPPA Conference
Kissimmee, FL
August 30, 2016



1

Background of Issue

- 1956 - about 20,000 employees in the employment services industry
- Primary focus was to place employees in clerical and factory positions that involved routine or repetitive tasks.
- Early 1970s - number of workers in the temporary help services industry grew to approximately 200,000 (<0.3% of the workforce)
- By 1990 - the industry comprised slightly more than 1 million employees (1.0% of the workforce)
- During the 1990-2008 - employment in the temporary help services industry grew from 1.1 million to 2.3 million
- More workers in higher skill occupations



Source: Bureau of Labor Statistics

4

Contact Info

Brian Bennett, PhD, CSP
(732) 803-7812
brian.bennett@ehs-excellence.com

Norman R Deitch, OHST
267-566-7383
norm.deitch@ehs-excellence.com



2

Current Status

- The temporary workforce continues to grow rapidly
- 3.0 million people are employed by staffing companies every week
- 11.0 million temporary and contract employees are hired by U.S. staffing firms over the course of a year
- 79% of staffing employees work full time, virtually the same as the rest of the work force.

Source - American Staffing Agency



5

Discussion

- Evolution of temporary workforce
- Definitions
- Background of OSHA's emphasis
- Staffing and host employer responsibilities
- Responsibilities under OSHA standards
- Recommended practices
- Resources



3

Increased Reliance of Temporary Workers

- "Temp to Hire"
 - *Screening process for new employees*
- Part Time or Limited Work
 - *Summer Help*
 - *Christmas*
 - *Fill in for sick, injured, vacationing employees*
 - *Fill gaps during short-term peaks in production*
- Temporary labor may cost less
- Full time help is not available
- Limits a company's liability to an employee



6

Top Occupations of Temp Workers

Occupation	Concentration
Production helpers	29.2%
Laborers and freight, stock and material movers by hand	18.4%
Assemblers who work in a team	17.6%
Human resources specialists	16.2%
Packers and packagers by hand	16.2%
Packaging and filling machine operators and tenders	16.1%
Data entry keyers	15.1%
Demonstrators and product promoters	11.5%
Metal and plastic cutting, punching and press machine setters, operators and tenders	10.1%
Construction laborers	9.4%

These occupations had high concentrations of their workers in the employment services industry in 2012.



7

Definition

- **Contract Company** - Provides a specific service to a company which must include supervision and assumes more responsibilities than a staffing company
- **Professional Employer Organization (PEO)** - puts a host employer's employees on the PEO's payroll as its own employees



10

Excludes

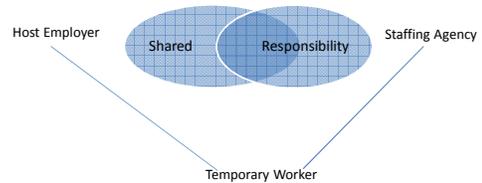
- Unions
- Day Laborers



8

Triangular Employment Structure

- Both the host employer and the staffing agency can be considered employers of the temporary worker



11

Definitions

- **Temporary Staffing Agency (TSA)** – employer of temporary workers (responsible for payroll issues)
- **Host Employer** - company that utilizes temporary workers (benefits from workers services)
- **Temporary Worker** – those who are paid by a temporary help agency, whether or not their job is temporary (BLS); those who are supplied to a host employer and paid by a staffing agency (BLS)



9

Issues

- New employees are at greater risk
- Many temp employees are new to a jobsite several times in a year
- Some host employers do not want to spend the resources to train an employee that will only be there a few days/weeks/months



12

Impact

- Some host employers use temp workers to avoid meeting compliance obligations (OSHA and others)
- Temp workers are often placed in the most hazardous jobs
- Temp workers are more vulnerable to (and fearful of) retaliation
- Language Barriers



13

Cases in the News

OSHA Regional News Release

U.S. Department of Labor
Office of Public Affairs

Region 2

June 18, 2014

2 companies cited for willful and other violations after temporary worker injured at Maplewood, NJ, bottling plant in December 2013
US Department of Labor's OSHA proposes \$182,270 penalty

MAPLEWOOD, N.J. – **Maplewood Beverage Packers LLC** and temporary employment agency **Corporate Resource Services Corp.** in Elizabeth have been cited by the U.S. Department of Labor's Occupational Safety and Health Administration for health and safety violations found at the beverage bottling company's Maplewood plant. OSHA's December 2013 investigation, which found willful and repeat violations, was initiated following a referral from the Maplewood Fire Department after a temporary worker was injured after falling from a ladder. OSHA has proposed \$182,270 in penalties.



16

Cases in the News

OSHA Regional News Release

U.S. Department of Labor
Office of Public Affairs

Region 4

Feb. 11, 2013

US Labor Department's OSHA cites Jacksonville, Fla.-based Bacardi Bottling following death of temporary worker on 1st day

JACKSONVILLE, Fla. – The U.S. Department of Labor's Occupational Safety and Health Administration has cited **Bacardi Bottling Corp.** with 12 alleged safety violations following the death of a 21-year-old temporary worker his first day on the job. Lawrence Daquan "Day" Davis was crushed to death by a palletizer machine at the Jacksonville facility in August 2012. The company uses Remedy Intelligent Staffing as a temporary staffing service to provide laborers for certain types of jobs.



14

Maplewood Beverage LLC Findings

- One (1) Willful
 - *Failure to provide annual audiograms*
- One (1) Repeat
 - *Machine guarding*
- 17 Serious and two (2) Other
- Total proposed penalty = \$54,450



17

Bacardi Findings

- Two (2) Willful
 - *Control of Hazardous Energy (LOTO) procedures/training*
- Nine (9) Serious
 - *Tripping, fire, egress, struck-by (falling bottles), LOTO, PPE, compressed air*
- Total proposed penalty = \$192,000



15

Corporate Resources Services Findings

- Two (2) Serious
 - *Failure to conduct a hazard assessment of the workplace*
 - *Failure to ensure that each employee was informed of the effects of noise on hearing and inform each employee about hearing protectors.*
- Total proposed penalty = \$11,000



18

Cases in the News

OSHA cites 5 companies following December 2013 fatality of temporary worker at Amazon fulfillment center in Avenel, NJ

On Dec. 4, 2013, temporary worker Ronald Smith died from injuries sustained after he was caught in between a conveyor system and crushed while performing sorting operations at an Amazon fulfillment center in Avenel.



19

OSHA's Position

"Host employers need to treat temporary workers as they treat existing employees. Temporary staffing agencies and host employers share control over the employee, and are therefore jointly responsible for temp employee's safety and health. It is essential that both employers comply with all relevant OSHA requirements."

— David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health



22

Amazon - Avenel, NJ

Third-party logistics provider Genco, based in Pittsburgh, was contracted by Amazon to direct the temporary employees from four staffing agencies involved in sorting operations.

The employees were required to monitor the conveyors and sorting machine to ensure packages were positioned properly while traveling over the conveyor and sorting belts



20

OSHA's Temporary Worker Initiative

April 29, 2014

Memorandum to the agency's Regional Administrators directing field inspectors to assess whether employers who use temporary workers are complying with their responsibilities under the Occupational Safety and Health Act



23

Amazon - Avenel, NJ Findings

One (1) Serious violation issued to Genco and to each of the four (4) staffing agencies: 1 serious, \$6,000 each, PPE

- The Corporate Services Co.;
- Corporate Resource Services Inc. dba Diamond Staffing Services;
- Remedy Intelligent Staffing Inc., dba Selective Staffing;
- Staffmark



21

Applicable Metrics FY 2014

Nationally

- 944 inspections conducted involving temporary employees exposed to hazards
- 626 of these resulted in citations
- 87.2% of these inspections resulted in Serious, Repeat or Willful citations
- 32 were fatality/catastrophe inspections
- Proposed penalties > \$11.8 million



25

Most Frequent Violations

- Electrical
- Control of Hazardous Energy
- Machine Guarding
- Fall Protection
- Hazard Communication
- Powered Industrial Trucks



26

Temporary Staffing Agency & Host Employer

- Key Concepts:
 - *Who is in the best position to prevent and correct hazards?*
 - *Who is in the best position to ensure compliance with OSHA standards?*
- Host/Agency communication is vital



29

OSHA Requirements: Who is Responsible?

November 21, 2012

OSHA Interpretation letter to
Staffmark

OSHA details its' position on the division of responsibilities and highlights three key areas: Recordkeeping, Training, and Hazard Communication

https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=28598



27

Temporary Staffing Agency & Host Employer

Staffing Agencies have a *duty* to inquire into the conditions of the workplace and *verify* that the host has fulfilled its' responsibilities to provide a safe workplace

- *Ignorance of hazards is not an excuse*
- *Staffing Agencies are responsible for providing at least some level of training, and depending upon their agreement with the host, and level of onsite presence and supervision, possibly much more*



30

Temporary Staffing Agency & Host Employer

- Host employers and staffing agencies are each responsible for maintaining a safe work environment
- BOTH employers may be held responsible by OSHA for violative conditions
- ALL workers have a right to a safe workplace, regardless of the duration of their employment



28

Staffing Agency Responsibilities

- Inquire about and evaluate **safety conditions** at assigned sites for temporary workers
- Provide **general safety training** to temporary workers **in the language best understood**
- Ensure employees have the basic ability to recognize potentially hazardous chemicals and other hazards
- Make arrangements with host employers to ensure they provide temporary workers with effective site-specific safety training (**may be done by staffing agency**)
- Ensure temporary workers understand their **OSHA rights**



31

General Safety and Health Training

- Training must include general hazard recognition, exposure prevention, and safe work practices
- Examples of subjects to be provided by Temporary Staffing Agency:
 - *OSHA rights & responsibilities*
 - *Reporting workplace injuries/illnesses*
 - *Chemical Hazard Communication*
 - *Safe lifting practices*
 - *Ergonomics*
 - *Personal Protective Equipment*
 - *Electrical Safety*
 - *Machine guarding*
 - *Fall hazards and protection*



32

Staffing Agency: Recommended Practices

- Stay in touch with employees and monitor their safety and health on a regular basis
- Be involved in accident investigations affecting employees and assist host employers in taking meaningful corrective actions
- Inform employees of the need to be trained on the manufacturer's and host employer's instructions for using specific tools and equipment
- Provide training and education to necessary to maintain licenses and certifications required by the host employer



35

Staffing Agency Responsibilities

- Complete due diligence of host employer and host worksite
 - *General hazard assessment*
 - *Chemicals*
 - *Training*
 - *PPE*

Maintain communication with workers and host employer



33

Staffing Agency: Recommended Practices

Good Job Descriptions

- Example tasks
- PPE requirements
- Safety requirements
- Exclusions
- Additional hazards




36

Staffing Agency Responsibilities

- Provide **workers' compensation** insurance and contact information
- **Record injuries/illnesses** for temporary workers directly supervised



34

Possible Prohibited Jobs/Industries

- Unsupervised Jobs
- Roofing
- Trenching
- Hazardous waste
- Biological waste
- Foundry (pours)



Determined by either the Staffing Agency or its Insurance Carrier



37

Temporary Staffing Agency & Host Employer

Must treat temporary employees like any other employee in terms of training and safety and health protection



38

Host Employer: Recommended Practices

- Assign a “Mentor” to temp workers
- Introduce the worker and involve them in the work environment
- Document training
- Demonstrate JSA or Safety Topics



41

Host Employer Responsibilities

- Provide **site-specific safety** training in the **language best understood**
- Training for the **safe handling of chemicals**
- **Provide, fit, and train workers with PPE** for site-specific hazards
- Provide medical surveillance when appropriate
- **Record injuries/illnesses** for temporary workers directly supervised



39

Contracts: Staffing Agencies & Host Employers

- Staffing contracts should **clearly outline** the aspects of safety for which the staffing agency and the host employer are responsible
- Describe who will provide both the **general** and **site-specific training** for workers



42

Medical Surveillance

- When medical surveillance is necessary, the host employer must offer and perform this requirement
- The staffing agency must ensure that the records of the required medical surveillance are maintained



40

Contracts Continued

- List **anticipated tasks** and **necessary PPE** for temporary workers, including who will provide the PPE
- Designate staffing agency and host employer **point persons** and provide their names and phone numbers for temporary workers to contact with concerns that arise



43

Recordkeeping

- Generally, the Host is responsible for recordkeeping at their respective establishment
- When multiple employers are involved, the responsibility to record is based upon who supervises the temporary worker's day-to-day tasks



44

Training

The temporary staffing agency must have a reasonable basis for believing that the host employer's training adequately addresses potential hazards employees may be exposed to at the host worksite



47

Recordkeeping

- Day-to-day supervision occurs when the employer supervises the details, means, methods, and processes by which the work will be accomplished
 - *Example 1: When Host employer directs the work and has full supervisory control - the host is responsible for recording*
 - *Example 2: When only the Staffing Agency directs the work and maintains supervisory control – the staffing agency is responsible*
- No matter who does the recording, both entities are responsible for ensuring it is done!



45

Hazard Communication

Both the temporary agency and the host employer are responsible for ensuring that employees are effectively informed and trained regarding exposure to hazardous chemicals

OSHA Directive CPL 02-02-038
OSHA Interpretation Letter (Feb 3, 1994)



48

Training

- There are specific OSHA standards which cover training requirements
- It is the responsibility of the temporary staffing agency to ensure that employees have received proper minimum training
- It is the responsibility of the host employer to ensure that site specific detailed training is provided and **understood**



46

Hazard Communication

- It is the responsibility of the temporary staffing agency to provide and ensure that employees receive and understand the basic principles of chemical safety, including the importance of labeling
- The host has the primary responsibility to ensure that temporary employees receive and understand the hazards of the chemicals present at the worksite before they begin work on the project
- Training should be conducted each time a new chemical hazard is introduced



49

Risk Assessment of Host Employer

The temporary staffing agency should evaluate the:

- *Description of the operation*
- *Risk assessments/audits*
- *Hazard Communication Program*
- *Three years of injury/illness data*
- *OSHA inspection history*
- *Existing safety manual(s)*
- *Training records*






Questions






Post Evaluation of Host Employer

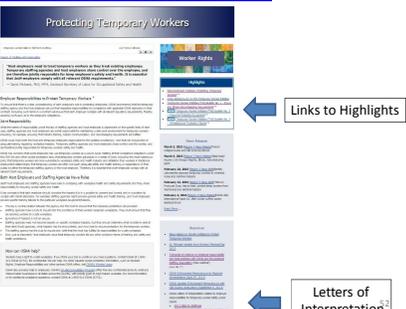
The temporary staffing agency should perform a post evaluation of the host employer at the conclusion or extension of the contract.

- *What safety training was provided prior to starting the job?*
- *What PPE was provided with instructions for use?*
- *Are the job functions being assigned and performed as described in the agreement?*
- *Do any temporary workers think that there are any unsafe aspects or hazards associated with the job?*




OSHA Temporary Worker Page

http://www.osha.gov/temp_workers/index.html



The screenshot shows the OSHA website page titled "Protecting Temporary Workers". It includes sections for "Worker Rights", "Employer Responsibilities", and "OSHA 1926.1000". Two blue arrows point to specific areas: one points to the "Worker Rights" section with the label "Links to Highlights", and another points to the "OSHA 1926.1000" section with the label "Letters of Interpretation".