**How to protect temporary workers and independent contractors**

*More employers use temps and contractors in today’s economy, but there’s confusion about who’s responsible for their safety supervision— the host employer or the temp agency? Or is it a shared responsibility?*

“You haven’t felt cold until you’ve worked an overtime shift in sub-zero temperatures on a warehouse loading dock during the Christmas rush,” said David Fields, 45, who worked for a logistics contractor in a major retailer’s consolidation center in Indiana. He was quoted in a report issued in September 2014 by the National Law Employment Project. “It’s dangerous to move heavy equipment when you can’t feel your hands and you’re walking on ice.”

Fields was working on a temporary basis—“temping”— a burgeoning business since the recession of 2007-2008. The number of “temps” or contractors has increased 50% since 2009, totaling about 2.8 million people, according to the Bureau of Labor Statistics (BLS). Temporary workers currently comprise about 2% of the U.S. labor force. Since the end of the recession the staffing and recruiting industry has created more jobs than any other single U.S. industry, according to the American Staffing Association (ASA). Temporary jobs accounted for 91% of total nonfarm job growth from June 2008 to June 2011, according to the BLS. The surge appears likely to continue: the staffing industry is expected to grow 6% in 2014 and 7% in 2015, according to a May 2014 article in *The Lane Report.*

Many temps like David Fields work in blue-collar jobs. In fact, about 42% of all temporary workers are employed in light industry or warehouses, according to the BLS. Temporary workers are also common in commercial and residential construction, manufacturing, food processing, landscaping and waste management. They take on some of the dirtiest jobs in America—grunt work, “jobs nobody else wants to do,” said Michael Foley, an economist at the Washington State Department of Labor and Industries, in a report, “Temporary Work, Lasting Harm,” issued by ProPublica.

Blue-collar temporary workers can face a daunting array of injury risks: fractures, punctures, lacerations, dislocations, heat exhaustion and chemical exposures. Blue-collar temps are six times more likely to be injured on the job than non-temps, according to a study of workers’ compensation claims in the state of Florida. And temps are three times more likely to suffer amputations than non-temps, according to the Florida study.

The Occupational Safety and Health Administration (OSHA) has become increasingly concerned about the safety of temporary workers. ”In recent months, we have received many reports of temporary workers suffering fatal injuries, some during their first days on the job,” said OSHA chief Dr. David Michaels at the August 2014 national meeting of the Voluntary Protection Program Participants’ Association (VPPPA). Temporary workers have been asphyxiated while cleaning inside chemical tanks; caught in heavy machinery, food grinders and tire shredders; crushed by moving equipment while doing cleanup work; run over while directing traffic; and have died of heat stroke after a long day on a roof or garbage truck, according to ProPublica.

Safety risks and the resulting injuries are worsening for temporary workers, according to a ProPublica study of workers’ compensation claims in five states: California, Florida, Massachusetts, Minnesota and Oregon. In the past five years, the claims rate of temp workers has increased in all of the states studied except Minnesota, while the claims rate of regular workers has held steady or fallen.

Temp workers in the state of Washington had substantially higher rates of injuries, especially in construction and manufacturing, than other workers, according to a study published in the *American Journal of Industrial Medicine.* Significantly, injuries to temp workers tend to be more serious, according to the study. Temps usually missed work longer because of their injuries— 40 days compared to 27 days for regular workers.

**Lack of safety training**

“When we investigate, we see that most employers don’t treat temporary workers the way they treat their permanent employees— they don’t provide them with the training that is necessary,” said OSHA chief Michaels.

A lack of safety training is one of a number of factors contributing to temp worker injuries and fatalities:

• Many temps move from job to job, with assignments not lasting long.

* They repeatedly enter new work environments lacking on-the-job experience and knowledge.

• They often lack supervision.

• They might use muscles not commonly used.

• They might work without proper personal protective equipment (PPE) such as respirators, hard hats or steel-toe boots, or they may not know how to properly use and maintain PPE such as respirators, eye protection, and fall protection harnesses.

• They can enter confined spaces without knowledge of confined space safety protocol and regulations, or operate machinery without knowledge of lockout/tagout procedures and regulations.

• Hoping to use their temporary position as a springboard to full-time employment, temps might take shortcuts or other risks to meet a push for production and impress their supervisors.

• Not wanting to be blacklisted by temp agencies or handed the dreaded “Do Not Return” (“DNR”) stamp on the back of a work slip, temps might not to speak up about safety problems or poor working conditions.

• And some employers “don’t treat temporary workers the way they treat their permanent workers,” as OSHA’s Dr. Michaels said, because host employers are not required to pay medical bills or workers’ compensation for injured temps; those costs must be covered by the staffing agency.

For host employers, who aren’t required to pay medical bills or workers’ compensation for injured temps, such workers can be viewed as nameless, faceless disposable commodities, easily replaced.

**The most serious threat**

OSHA, in its website section on temporary worker safety, points to what it considers the most serious threat to temp safety: the breakdown in communication and a fractured sense of shared responsibility between the staffing agency and the host employer. What should be a strong partnership too often falls prey to confusion, assumptions, ignorance, apathy and neglect.

OSHA considers the staffing agency and the host employer to be “joint employers” of temporary employees, according to an agency memorandum issued on July 15, 2014 to help OSHA field staff enforce temporary-employment policies. Each employer bears responsibility for compliance, according to the OSHA memo.

“An employer’s commitment to the safety of temporary workers should not mirror those workers’ temporary status,” said OSHA’s Dr. Michaels.

“Workers sent by a staffing agency to a worksite deserve the same level of protection from workplace hazards as the host employer’s workers do,” said Dr. John Howard, director of the National Institute for Occupational Safety and Health (NIOSH).

**Best practices**

Dr. Howard and Dr. Michaels made their statements in announcing the release in August 2014, of the joint OSHA/NIOSH publication, “Recommended Practices for Protecting Temporary Workers.” The best practices emphasize the need for a close working partnership between the staffing agency and the host employer, trust and transparency between the two parties, constant communication, and an operationally defined delineation of responsibilities for protecting temps that is spelled out in the written contract between the two parties. The recommendations make clear there will be no “second-class citizenship” for temp workers. The host employer treats temps like any other worker on site regarding safety training and protections.

OSHA places importance on the contract documentation. In the agency’s memo to its field inspectors, it is stated that “OSHA compliance officers should review any written contract(s) between the staffing agency and the host employer and determine if it addresses responsibilities for employee safety and health. It should be understood, however, that the contract’s allocation of responsibilities may not discharge either party’s obligations under the OSH Act. The extent of the obligations each employer has will vary depending on workplace conditions and may be clarified by their agreement or contract. Their duties will sometimes overlap.”

For example, if a temporary worker is injured at a host employer’s worksite, the host employer should inform the staffing agency of the injury. The staffing agency, in turn, should follow up about preventive actions taken to avoid future injuries from occurring. Similarly, if a staffing agency learns of a temp worker’s injury, perhaps through the filing of a workers’ compensation claim, the staffing agency should inform the host employer to help ensure that preventive measures are taken before more workers are hurt.

**Working together**

The following are best practices culled from a literature review and OSHA and NIOSH’s recommendations for how staffing agencies and host employers should work together to protect temporary workers:

• **Evaluation:** Before a contract is written, the staffing agency and the host employer should jointly inspect the worksite where temps will be employed. Job-safety analyses drawn up by the host employer for tasks to be undertaken by temps should be reviewed at this time. The goal of the evaluation process is to identify and mitigate any hazards that could threaten the well-being of temp workers.

The National Association of Personnel Services’ Standards of Ethical Practices states that “precaution shall be taken against referring any candidate to employer/clients who are known to engage in illegal or questionable business practices which might jeopardize the safety of the candidate.”

• **Training:** Temporary workers should receive two levels of safety training: basic fundamentals and site- and task-specific orientations. The basics, such as an employee’s right to know about workplace hazards (OSHA’s hazard communication standard) and their right to speak up about dangerous conditions without retaliation, often can be covered by the staffing agency. The host employer trains temps in safety specifics, such as the company’s confined space entry procedures, energized machine lockout/tagout requirements, respiratory protection and hearing conservation requirements, and personal protective equipment requirements. Both the staffing agency and the host employer are recommended to conduct safety and health orientations for temp workers before they begin new jobs—and temp workers are continually assuming new jobs, according to OSHA.

•**Exchange safety and health programs:** Both the staffing agency and the host employer should develop and exchange their injury and illness prevention programs (called I2P2), although I2P2 programs are only an OSHA recommendation, not a statutory requirement. Some states, however, such as California, mandate I2P2-like programs. I2P2 programs call for documentation of management leadership in safety and health issues, employee participation in safety and health processes, training, hazard identification and control, injury and illness recordkeeping, first aid and medical procedures, fire and other emergency response procedures, and ongoing review of overall program effectiveness.

•**No surprises:** Both parties should reach an agreement on the job responsibilities and the scope of work to be taken on by temporary workers. Job tasks should be known in advance so that specific safety training can be provided. Assignments should be put in writing. These measures help prevent the practice of temps coming to a job thinking they will be doing a certain task, such as construction site ground cleanup, only to be given a new assignment, such as climbing on roofs to throw discarded materials into dumpsters. In this case, the temps might not be trained or prepared to work at heights.

•**Communication to temp workers:** The contract or agreement should spell out who informs temps about on-the-job safety precautions and practices. Staffing agencies may give temps broad, basic safety information, and the host employer will inform temps about task-specific safety requirements. Temps must also be informed about site-specific provisions of first aid and medical treatment, and emergency procedures such as fire evacuations.

•**Injury and illness tracking:** Any injury or illness occurring on a host employer’s worksite that must be logged on OSHA recordkeeping forms, as well as serious injuries requiring hospitalization and fatalities that must be reported directly to OSHA area offices, are the regulatory compliance responsibility of the host employer. Injury and illness information might be first obtained by a staffing agency, which must inform the host employer to satisfy the host’s OSHA recordkeeping responsibilities, and also so the host can take action to prevent future similar injuries or illnesses. The flow of injury and illness data is a two-way channel, and both parties must be open and transparent in sharing information.

•**Reporting:** Temps should know how to report injuries, near misses or close calls, and hazardous conditions to the host employer. OSHA statutory whistleblower protections cover temp workers against any possible retaliation, such as being immediately dismissed from an assignment. The staffing agency should be made aware of all injuries, close calls, and reports of hazardous conditions.

•**Investigations:** Any safety and health-related incident, such as an injury or a close call, should be jointly investigated by representatives of the staffing agency and the host employer. The goal is to find and correct the root causes of the incident, not to assign blame or reach other superficial, “quick fix” conclusions.

•**Ongoing contact with temps:** A basic employer tenet for treating a worker whose injuries force him or her to stay home from work is to maintain regular contact with the injured employee. This assures the worker that the company cares about his or her health status and is not forgetting or disowning them. The same principle applies to keeping in touch with temp workers throughout their temporary assignment. Some assignments stretch for weeks, months and even years—so-called “permatemping.” Both the staffing agency and the host employer should regularly check in with temps in a practice known as making “safety contacts.”

•**Assessment:** Finally, the staffing agency and the host employer should jointly assess the safety performance of temporary workers. OSHA and NIOSH recommend that this review should include more than after-the-fact injury statistics, which have limited preventive value. Close calls, often precursors to accidents, should be recorded. And so-called leading indicators should be charted, such as the number of training session conducted and the number of hazards identified and abated.

For staffing agencies, a workforce with a superior safety performance record can be a competitive advantage in winning contracts—an indication of a strong safety culture and strong safety values—and can save the agency money in reduced workers’ compensation claims.

For the host employer, the superior safety performance of temporary workers in its workplace lowers OSHA recordable incident rates and is also evidence of a strong safety culture and safety values. The host should be able to assess the safety performance of temporary workers separate from its full-time workforce, and at the same time have a holistic view of how temp worker safety integrates with the company’s overall safety performance. Host employers need to address the specific safety challenges presented by temporary workers on assignment, and simultaneously manage temp worker safety to the same level of protection afforded to permanent employees.

Staffing agencies and host employers without dedicated safety and health professionals on staff are recommended by OSHA and NIOSH to make use of third-party safety and health consultants in order to execute these best practices. Staffing agencies and host employers may also? be able to use the safety and health consultation services provided by their workers’ compensation insurance providers. Small and medium-size businesses may request assistance from OSHA’s free on-site consultation service, which is separate from OSHA’s enforcement arm and whose service does not result in penalties or citations.

These best practices are posted on the website of the staffing firm Day & Zimmerman:

“We take on high-risk work in hazardous environments for some of the largest companies and government groups… (We) are selected to perform this work because we know how to do it safely and our customers have confidence in our proven safety record… Safety is simply not another thing we look to control, it is what drives how we manage, perform and live… Safety leaders representing each of (our) business units address emergent safety challenges across the variety of industries we serve. Reviewing each unit’s safety performance and sharing lessons learned are just part of the Safety Council’s quarterly meetings. Annually, the Council plans a two-day summit, inviting key leadership and management personnel… to participate in an intense review of the state of our safety culture, key trends and issues and strategic plans.”

An example of a host employer doing its best to protect temporary workers comes from OSHA’s Dr. Michaels, who described the program of a General Electric (GE) plant in Wisconsin at the VPPPA meeting in August 2014. At this plant, contractor and temporary employees are trained to the same level as permanent GE employees, depending on the work area and work performed. All temps and contractors performing construction work are required to complete an 8-hour safety orientation and pass a comprehensive quiz to be able to work at the company their first day on site. This training must be repeated annually, for even long-term or frequently used contractors.