

ASA  
American Staffing Association

# Playing It Safe—Workplace Safety Obligations of Staffing Firms and Their Clients

ASAPto  
WEBINARS

July 18

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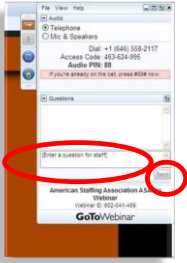
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## How to Ask a Question

- **Questions Panel**
  - Type your questions into the Questions panel and click Send.



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## Stephen Dwyer, Esq.

### General Counsel, American Staffing Association

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 American Staffing Association

### Today's Panelists

- Dr. David Michaels, Assistant Secretary, OSHA
- Lewis Daniel, Supervisor, Office of Chemical Process Safety and Enforcement Initiatives, Directorate of Enforcement Programs
- Tom Galassi, Director, Directorate of Enforcement Programs
- Bill Willson, Program Analyst, Directorate of Cooperative and State Programs

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## Playing It Safe—Workplace Safety Obligations of Staffing Firms and Their Clients

**David Michaels, PhD, MPH**  
Assistant Secretary for Occupational Safety and Health  
United States Department of Labor



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## Growth of Temporary Workforce



- 861,000 temp jobs added to the economy since August 2009



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### Increased Likelihood of Injury

- New workers are at increased risk of injuries. Temporary workers are often new to a jobsite several times a year
- Temporary workers are at greater risk of workplace injury than non-temps
- Host employers are less likely to devote resources to fully train Temporary workers




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### By Law, Employers are Required to:

- Provide a workplace free of recognized hazards
- Provide appropriate training in a language and vocabulary that workers understand
- Not retaliate against workers who raise safety concerns or report injuries




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### OSHA's Temporary Worker Initiative

**“Employers have a duty to provide necessary safety and health training to all workers... [P]lease direct CSHOs to determine... whether any employees are temporary workers and whether any of the identified temporary employees are exposed...”**

07 25 2013  
MEMORANDUM FOR: REGIONAL ADMINISTRATORS  
SUBJECT: RECALLS & ENFORCEMENT  
OSHA: DEPUTY ASSISTANT SECRETARY  
DIRECTORATE OF ENFORCEMENT PROGRAMS  
Protecting the Safety and Health of Temporary Workers  
Recent months, we have received a series of reports of temporary workers suffering fatal injuries. In many cases, the employer failed to provide safety training or, if some instruction was given, it was inadequate or not followed by their deaths.  
In the number of temporary workers and the recent high profile fatal incidents, our agency is making recruitment, outreach and training to assure that temporary workers are protected from workplace hazards. Please direct CSHOs to determine whether any employees are temporary workers and whether any of the identified temporary workers are exposed to a hazardous condition. In addition, CSHOs should consider using recall records and information to identify workers who have been injured or exposed to a hazardous condition. Recent reports have shown that the same recall did not protect them from serious workplace hazards due to lack of personal protective equipment when working with hazardous chemicals and lack of lockout/tagout protection, among others.




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## OSHA - Overview

### Protecting the Safety and Health of Temporary Workers

Lewis B. Daniel, Supervisor  
Directorate of Enforcement Programs



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## OSHA - Background

- In 1970, Congress created OSHA:
  - Assure safe and healthful conditions for working men and women;
- The OSH Act ensures OSHA's mission by:
  - Setting and enforcing standards;
  - Providing training, outreach, education;
  - Compliance assistance.



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## OSHA - Jurisdiction

OSHA coverage includes private sector employers and workers in all 50 states, the District of Columbia, and other U.S. jurisdictions either directly through Federal OSHA or through an OSHA-approved state plan.



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## Employer Rights and Responsibilities

- Employers have the responsibility to, at a minimum, comply with the OSH Act;
- Employers must perform their due diligence to find and correct safety and health hazards;
- Employers must provide safety training to workers in a language and vocabulary they can understand;
- Employers must inform workers about chemical hazards through training, labels, alarms, color-coded systems, chemical information sheets and other methods – aka Hazard Communication.




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## Workers' Rights

Workers have the right to:

- A safe and healthful workplace per the OSH Act;
- Receive information and training about hazards, methods to prevent harm, and the OSHA standards that apply to their workplace (the training must be done in a language and vocabulary workers can understand);
- File a confidential safety and/or health complaint with OSHA to have their workplace inspected.




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## Workers' Rights

Workers have the right to:

- Participate in an OSHA inspection and speak in private with the inspector;
- File a discrimination complaint under Section 11 (c) of the OSH Act, which prohibits discharge or discrimination by "any person" against any employee for OSHA-related activity;
- File a complaint if punished or discriminated against for acting as a "whistleblower" under the additional federal laws for which OSHA has jurisdiction.




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## Enforcement

### Protecting the Safety and Health of Temporary Workers

Thomas Galassi, Director  
Directorate of Enforcement Programs



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## Overview

- OSHA Temporary Worker Initiative
- Recommended Safety and Health Practices
- Shared Responsibility
- Compliance Guidance



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## Temporary Worker Initiative

- To ensure that staffing agencies and host employers understand their responsibilities under the Occupational Safety and Health Act.
- Temporary workers are entitled to the **SAME** safety and health protections as direct-hire employees.



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## Temporary Worker Initiative

### Background

Recent cases include workers exposed to serious hazards without proper protection and training.

- Dangerous heat stress
- Lack of essential personal protective equipment (PPE)
- Exposure to hazardous energy requiring lock out/ tag out




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## Temporary Worker Initiative

### Activities

- April 29, 2013 Memorandum:
  - Highlights the importance of protecting temporary workers
  - Instructs the field to ensure protections are in place including training and gather temporary worker data
- Reaching out to Stakeholders




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## Temporary Worker Initiative

### Activities

- Promoting compliance assistance nationally and locally.
- Identifying Best Practices
- Developing outreach material
- Meeting with National Advisory Committees:
  - NACOSH – National Advisory Committee on Safety and Health
  - ACCSH – Advisory Committee on Construction Safety and Health




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### Current Data (as of 7/16/13)

As a result of the April 29<sup>th</sup> instruction:

- 262 Inspections have been or are being conducted which identified Temporary Workers exposed to safety and health violations
- Thus far, 270 violations have been cited




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### Top Violations at Worksites with Temporary Workers

- Electrical
- Lockout/Tagout
- Machine Guarding
- Fall Protection
- Hazard Communication
- Powered Industrial Trucks




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### Recommended Safety and Health Practices

Staffing agency & host employer should **both**:

- Have a written safety and health program
- Perform a hazard assessment of the worksite
- Define scope of work in the contract
- Conduct new project orientation and safety training that addresses hazards to which temporary workers may be potentially exposed.




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## Recommended Safety and Health Practices

### Maintain Communication

The staffing agency should maintain communication with the worker and the host employer.

- Ensures injuries and illnesses are properly reported and recorded.
- Alerts staffing agency to workplace hazards so they may take appropriate actions.
- Verifies scope of work is maintained.




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## Incentive Programs

OSHA has asserted its position against safety incentive programs that discourage workers from reporting injuries.

- Such programs could violate Section 11(c) of the OSH Act (Whistleblower Protection) and 29 CFR 1904.36 (Recordkeeping).
- See OSHA memorandum "*Employer Safety Incentive and Disincentive Policies and Practices*" (March 12, 2012) for examples and further guidance.




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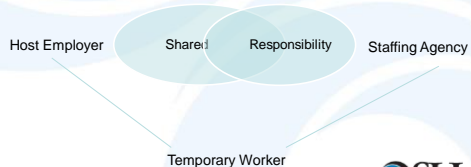
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## Triangular Employment Structure

Both the host employer and the staffing agency are employers of the temporary worker




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## Shared Responsibility for Worker Safety and Health

### Host employer and staffing agency

- The contract between the host employer and the staffing agency should define their relationship and should clarify and assign S&H duties and responsibilities
- Each employer should think about hazards it is in the better position to prevent and correct, and comply with OSHA standards
- Due diligence to inquire and verify




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## Recently Issued Guidance

Nov. 21, 2012 – Clarification of OSHA safety requirements between a temporary staffing agency and its client

Letter of interpretation addressing common questions regarding:

- Recordkeeping
- Training
- Hazard Communication




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## Recordkeeping

Responsibility to record is based upon who supervises the temporary worker's day-to-day tasks

▪ Generally, the host employer maintains OSHA 300 Injury and Illness Logs.

▪ For more information:

- 29 CFR 1904.31, Covered Employees
- CPL 02-00-135, Recordkeeping Policies and Procedures Manual (2004)




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### Training

- Provide the appropriate safety and health training and ensure the other employer is also providing it.
- Generally, the host employer provides site-specific training.
- All training must be done **before** the worker begins work on a project or at a new worksite.
- Hazard communication training is an example of **shared** responsibility




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### Hazard Communication

- Host employer holds the primary responsibility for training because the host employer:
  - uses or produces chemicals
  - creates and controls the hazards
  - best suited to inform workers of chemical hazards specific to the workplace
- The staffing agency maintains a continuing relationship with its employees, and is, at a minimum, expected to inform employees of the requirements of the standard




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### Summary

- Staffing agencies have a legal obligation not only to comply with the requirements that are under their exclusive control, but also to monitor the working conditions of your employees at their clients' workplaces.
- Host employers must treat temporary workers like any other workers in terms of training and safety procedures.




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## Enforcement Guidance

- [Protecting the Safety and Health of Temporary Workers \(April 29, 2013 memorandum\)](#)
- [Employer Safety Incentive and Disincentive Policies and Practices \(March 12, 2012 memorandum\)](#)
- [Responsibility of staffing agency and host employer for temporary workers' \*\*training, hazard communication, and recordkeeping\*\* \(Nov. 21, 2012\)](#)
- [Employers' Responsibilities towards Temporary Employees regarding \*\*hazard communication, PPE, medical monitoring, and cumulative exposure data\*\* \(Feb. 3, 1994\)](#)




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## OSHA Resources

### Protecting the Safety and Health of Temporary Workers

Bill Willson, Program Analyst  
 Directorate of Cooperative & State Programs




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## OSHA Web Site




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### Diverse Workforce Outreach: OSHA Publications

OSHA®

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### Compliance Assistance Web Page

OSHA®

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### Compliance Assistance and On-Site Consultation Programs

#### Compliance Assistance

- Cooperative programs
- Compliance Assistance Specialists
- Spanish-Language Resources
- Diverse Workforce Limited English Proficiency Outreach

#### On-site Consultation Program:

- Free, confidential advice/assistance
- On-site training assistance
- Improved workplace
- Productivity
- Lower workers' comp premiums
- Better employee productivity, retention, morale




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# OSHA's Campaigns: Raising Awareness

## OSHA's Heat Campaign

The screenshot shows the OSHA website with a prominent red banner that reads "WATER, REST, SHADE". Below the banner, there are sections for "Educational Resources" and "What is heat stress?".

A black and white portrait of a man in a hard hat. Text overlay reads: "I worked construction for 10 years before my fall. It shattered my body and my livelihood. Work safely. Use the right equipment." Below the photo is a red banner with the text "FALL FROM LADDERS, SCAFFOLDS AND BENCHES CAN BE PREVENTED".

## Fall Prevention




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## Contact OSHA

- Toll-Free Hotline (1-800-321-OSHA) (English and Spanish)
- E-Correspondence (English and Spanish)
- Letter
- Regional/Area Offices

The screenshot shows the "Contact Us" section of the OSHA website. It includes links for reporting violations, filing complaints, and emergency notices. It also provides contact information for the toll-free hotline and regional offices.

Screen Capture of OSHA's Contact Us Web Page




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## Thank You for Attending

- Today's webinar has been recorded
- Recording will be available within two days
- Qualifies for continuing education credit

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## How to Submit Your CE for This Webinar

- Visit [americanstaffing.net](http://americanstaffing.net) and click on Education & Certification
- Scroll down to access the "Already Certified?" section for the CE submission form and to view your CE summary

  
Certified Staffing Professional

  
Certified Search Consultant

  
Technical Services Certified



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## Upcoming Webinars

- July 25: Maximize the Short- and Long-Term Value of Your Firm
- Aug. 1: Get the Most Out of Tax Credit Programs
- Aug. 22: The Employee Handbook—Do I Really Need One for Corporate Staff and Contract Workers?

These ASAPro webinars each qualify for 1.0 active CE hour

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