



To: David Michaels, Assistant Secretary, OSHA
Re: Temporary Worker Policy Recommendations
Date: August 21, 2013

Thank you for your leadership in our shared goal of ensuring that temporary workers, who are among our most vulnerable of employees, achieve the full protections afforded under the OSH Act. The National Council for Occupational Safety and Health, the National Staffing Workers Alliance and the Occupational Health & Safety Section of the American Public Health Association are seeking to lend our support towards this goal by providing to you the recommendations below, and by requesting a directive from federal OSHA that incorporates these recommendations.

In addition to these recommendations, we are asking that federal OSHA facilitate the cross-training of compliance officers with COSH groups and Worker Centers to ensure that there is a clear, shared understanding of procedures and to promote collaborative efforts to protect temporary workers. Those individuals who contributed to and/or endorsed the recommendations are listed at the bottom of this memo.

RECOMMENDATIONS

Clarify Health and Safety Responsibilities in Dual Employer Settings

1. OSHA should set forth in its Field Operations Manual a clear articulation of the respective and joint responsibilities of host employers and temporary staffing agencies in complying with the OSH Act and its regulations, including responsibilities for training, provision of personal protective equipment, compliance with standards, control of hazards, injury and illness recordkeeping and compliance with anti-retaliation regulations. This information should be disseminated broadly to employers, temporary staffing agencies, workers, COSH groups, worker centers and others.
2. OSHA should create a written policy specifying health and safety training requirements for temporary staffing agencies, but at a minimum, each agency should educate workers about their rights under OSHA, the type of job site safety training the worksite employer must provide under OSHA and safety equipment needed

Targeting, Tracking, Data Collection

3. OSHA should initiate a National Emphasis Program in high-hazard industries that use temporary staffing agencies.

4. OSHA should identify the 20 largest temporary staffing agencies in the client high-hazard industries (construction, manufacturing, warehousing, healthcare, transportation, etc.) and repeat offenders, and put together a profile of these agencies so that compliance officers would learn to quickly recognize that they are dealing with a major employer, not just an agency isolated to the location inspected.
5. In many cases, worksite employers may not be aware of injuries and illnesses either because the employee may report the injury only to the temporary staffing agency or because the employee may report the injury after leaving the worksite job. In order to more accurately track injury/illness rates in companies that use temporary staffing agencies, such agencies should be included as part of OSHA's data initiative.

Strengthen Internal OSHA Capacity

6. The policies and procedures recommended below should be incorporated into the OSHA Field Operations Manual.
7. OSHA needs to provide consistent training to compliance officers to improve their process for investigating joint employer status.

Inspection Process

8. In instances where OSHA has opened an investigation of a worksite employer that hires worker from one or more temp agencies, it should be standard practice to investigate whether each temporary staffing agency provided proper training in compliance with the hazard communication standard and is complying with recordkeeping requirements..
9. OSHA should request and be provided with the name of any and all temporary staffing agencies that have placed workers at the given facility, including all relevant contact information: address, phone, fax of the corporate main office, the specific office from where the workers were dispatched, the staffing agency supervisor/s at the client company, and the staffing agency supervisor/s at the dispatching office.
10. In states where temporary staffing agencies are required to provide an employment notice to workers with information about the training and protective equipment needed, employers should be compelled to share with OSHA the documents they are providing to workers to determine if the employer provided essential safety training and met PPE requirements.
11. OSHA should require employers to provide a roster of all workers employed the day of the investigation and their job title (both for full-time and temporary workers) so that OSHA can select people that they wish to interview.
12. OSHA should include as part of its investigation protocol an inquiry as to whether health and safety deficiencies are restricted to the one worksite branch or whether similar deficiencies may be identified in multiple branches, regional and/or national parent companies. In the event that OSHA learns of deficiencies beyond the individual branch, OSHA should proactively investigate, and seek enterprise-wide abatement.

In addition, OSHA should include as part of its investigation protocol, an inquiry as to whether

health and safety deficiencies are restricted to one department or area of a third party client company or are applicable to multiple areas within that work-site. In the event that OSHA learns of deficiencies beyond the individual area or department, OSHA should proactively investigate, and seek enterprise-wide abatement. OSHA should coordinate, collaborate and promote mutual referrals among U.S. Department of Labor agencies to promote improved compliance by temporary staffing agencies with occupational safety and health, wage and hour and other labor laws.

Protecting workers under 11c and improving investigation procedures:

13. Upon OSHA's initiation of worksite inspection, a notice should be issued to the temporary staffing agency informing them that retaliation and intimidation is prohibited.
14. In the course of an investigation at a worksite where temporary workers are employed, in light of their increased vulnerability, OSHA should distribute an information card in the languages of the workers informing them about OSHA's role, the workers' protection under 11c, and the rights of workers to contact a non-profit organization and to speak with OSHA offsite to ensure their confidentiality and safety.
15. OSHA should partner with non-profit organizations and invite them to discussions with temporary workers offsite, a practice that NIOSH has utilized.
Where partnerships have been established, include in the protocol language for investigators to proactively explain to workers that if they are not comfortable speaking directly to investigators at that time, a worker center or other organization has offered to meet offsite.

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