

## Keeping OSHA Honest: What Staffing Firms Can Do to Level the Playing Field

Staffing firms work hand and glove with host employers to provide a qualified and safety oriented workforce. Safety is always important, but in some high-risk industries, the danger posed by the failure to follow safety guidelines can have catastrophic consequences.

Safety first for their employees is the guiding principle for all reputable staffing firms. But a common complaint from staffing firms from around the country is that the Occupation Safety and Health Administration (OSHA) does not consistently follow its own rules when enforcing safety standards, frequently to the detriment of staffing firms. This concern also applies to states such as California that have their own departments of occupational safety and health. Many of the rules regarding proper procedure and safety protocols are ambiguous enough that staffing companies are inspected and fined more frequently than the host employers.

It causes no end of frustration for staffing firms and their safety managers that OSHA inspectors seem unaware of their own rules. It doesn't help that much of the documentation and the required forms don't take temporary staffing into account. That includes the OSHA 300 Log of recordable injuries and illnesses. According to its website, OSHA has been proactive in clarifying rules pertaining to the role of host employers and staffing firms regarding reporting requirements. OSHA and state departments have also touted their efforts to "crack down" on staffing firms and protect the safety of temporary workers.



But certified safety and health officials (COSHO) don't always practice what they preach. This applies especially to the question of which entity is responsible for recording injuries and illnesses. For instance, regarding who is responsible for maintaining the 300 logs, OSHA says it is whichever entity has the day-to-day supervisory role of the employees, be they temporary or permanent, that is responsible for the recording.

A COSHO will cite the staffing firm for failure to record injuries and illnesses to employees, even if it is indisputable that the host employer had the day-to-day supervisory role. The federal regulation (9 CFR 1904.31: 1904.31(a) clearly states that "You must record on the OSHA 300 Log the recordable injuries and illnesses of all employees on your payroll, whether they are labor, executive, hourly, salary, part-time, seasonal, or migrant workers. You also must record the recordable injuries and illnesses that occur to employees who are not on your payroll **if you supervise these employees on a day-to-day basis**. If your business is organized as a sole proprietorship or partnership, the owner or partners are not considered employees for record keeping purposes."

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According to the American Staffing Association (ASA), despite what the regulations say, staffing firms are frequently cited for not recording injuries and illnesses, even if a temporary employee sustained an injury while under the supervision of the contractor. This puts staffing firms in the role of traffic cop challenging inappropriate citations, even if the contractor was the responsible party. According to many staffing firms, the contractor is rarely cited whereas the staffing firms bear the brunt, simply because the COSHO doesn't interpret the regulation correctly. Staffing firms can hold all parties accountable. Here's how.

1. Remind the OSHA officials of their own rules and make sure they're following them at both the state and federal level. For states that have their own departments of occupational safety and health, the rules might be different. The staffing firm should familiarize itself with all regulations. If the COSHO is under the impression that the staffing firm must be cited for not recording injuries or illnesses on 300 Log, just because the injury was sustained by a temporary worker, make sure the official is knows that is clearly not the case in this work situation.



Keep in mind that OSHA also has different recording requirements for different industries. For example, it's not uncommon for a firm that specializes in light industrial to provide temporary workers for two industries. Make sure you're familiar with both requirements.

2. Establish which entity is responsible for the day-to-day supervisory role. This goes both ways. If the staffing firm is the day-to-day supervisor at a worksite,

it must record the injuries and illnesses of the contractor's employees. The injury or illness should only be recorded once, so there is never a joint supervisory role (Section 1904.31(b) (4)). However, this can cause confusion. According to a letter from OSHA on this issue, "Day-to-day supervision occurs when ' in addition to specifying the output, product or result to be accomplished by the person's work, *the employer supervises the details, means, methods and processes by which the work is to be accomplished.* '" Even if the staffing firm provides supervision on-site, daily to the temporary workers, it still must meet the standard above to be the day-to-day supervisor.

OSHA points out that this standard must be based on the "actual facts" at the worksite. Both contractor and staffing firm should be clear on these facts. The entity providing the actual daily supervision is responsible for the recording in the 300 Log "regardless of any wording of the parties contractual arrangements." This is important for both establishing compliance, and for ensuring the injured worker is covered for workers' compensation purposes. Regardless of responsibility for recording, both entities are required to have workers' comp coverage.

3. Inspect the contractor's worksite prior to the job. Serious safety violations can cause significant injuries and illnesses. Make sure you are clear on exactly what your temporary workers will do. Bring any safety issues to the attention of the contractor. If training is required for a certain job make sure the contractor is going to provide it. Regardless of who is supervising your temporary workers, safety should be job one. Serious or serious and willful citations can amount to thousands of dollars in fines. The injuries that may occur can increase workers' comp rates. A safe worksite means fewer if any recordable injuries.

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