




Temporary Workers and Joint Employment

April 11, 2019

Please note:

- *All phone lines will automatically be muted on entry, and will remain muted for the length of the presentation.*
- *You may submit written questions via the “chat” icon shown here* .

Opening Remarks



Brian McNulty

*VP Commercial Insurance Sales Manager
Johnson Financial Group*

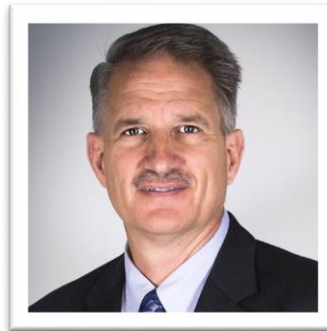


Featured Presenters



Maureen Siwula

Human Resource Business Advisor
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David Manke

VP Loss Control Engineer
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Brian McNulty

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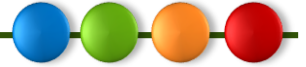




Joint Employment Prepare Your Work Place

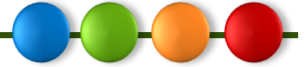
Presented by: Maureen Siwula, SPHR





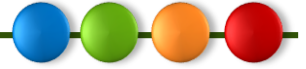
Joint Employment Should Not *Scare* You Away From Using Temporary Help; Be Prepared

- The use of temporary workers and independent contractors is still an effective way to build a contingent work force.
- In the last 10 years the use of temporary help has risen in the U.S. from 1.8 million to 2.8 million (BLS)
- Know and understand who you are working with and build reliable and safe partnerships will reduce risk.



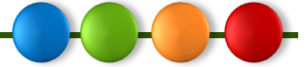
Be Prepared Continued

- Have reasonable and compliant contracts, agreements, safety policies and procedures that apply to all who provide work in your facility.
- Train your temporary work force the same as any employee – do not cut corners with safety
- Temporary work should be temporary, temp to hire is fine just don't wait years to do this. The longer the assignment may increase your risk.
- Have clear delineation of what the agency does and what you as host employer will do.



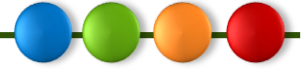
Build a Partnership with your Temporary Agency and your Independent Contractors. They are Members of Your Team.





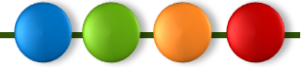
Screen and select agencies and contractors that meet your expectations for:

- Reliability and reputation, ask about how the agency recruits and trains their employees
- Pre-employment testing
- Background checks
- Skills testing
- Experience
- Orientation and training
- Contract language in the work agreement



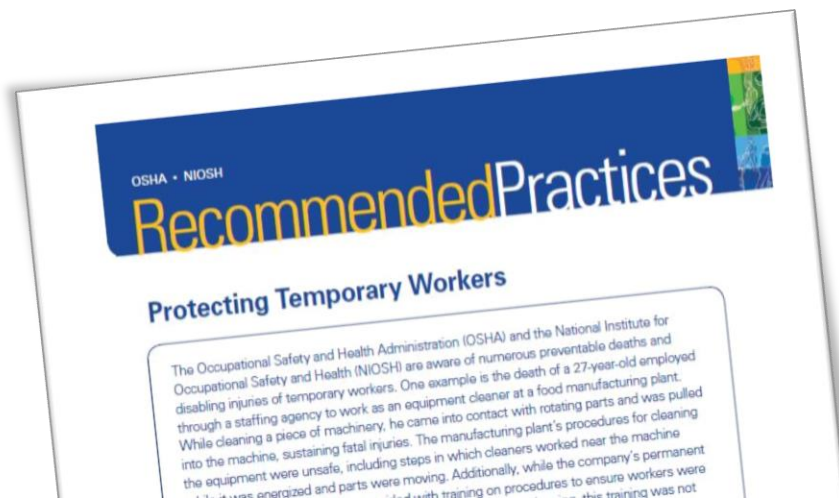
Screen and Select

- Review waivers and liabilities in the agreements?
- Does the agency have adequate liability insurances?
- Invite the agency in for a tour and understanding of work expectations – you are their customer.

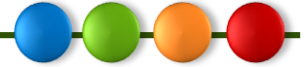


They are not just “Temps”

- Temporary workers need to have the same safety and skills training you give your own employees.
- Decide well in advance where you need temporary workers. It may be best in entry level jobs to begin.
- Review the Massachusetts Case of joint employer

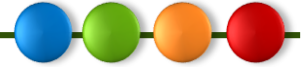


For OSHA recommended practices to protect temporary workers, [click here.](#)



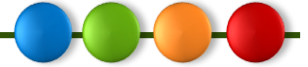
Safety Training

- Provide job specific safety training to all who work with you
- Who will provide for PPE's shoes, glasses ear buds
- Document training – provide written procedures
- Do not have any worker perform a task they are not trained to perform – Forklifts?
- Investigate every injury and accident thoroughly
- Train all on how to report an incident
- Use signage



Account for Temporary Workers

- True or False? – during an OSHA inspection, OSHA is not allowed to speak to temporaries or independent contractors?
- True or False ?– Host employers never record temporary help injuries on OSHA 300 Log?



General Safety Tips



- Have a clear written safety policy and procedure
- Assign safety to a leadership role that will hold all accountable to regulations and policies
- Conduct annual safety training ; fire, security, first aid, hazards, violence, electricalthe list goes on
- Develop a safety committee
- Know the OSHA standards that apply to your organization
- Conduct a safety audit of your facility

OSHA Implications on Temporary Worker Initiatives

David Manke
Johnson Financial Group

Joint-Employment Defined

- “A relationship between two or more employers in which each has actual or potential legal rights and duties with respect to the same employee.”
 - » *In a Joint-employment situation, responsibilities may be shared*
- Joint-employment is inherent in the staffing firm/client relationship
 - » *The staffing firm is viewed as the “primary employer” and bears most of the responsibility for the employee*



OSHA Temporary Worker Initiatives

- On April 29, 2013, OSHA launched the Temporary Worker Initiative (TWI)
 - » *An effort to help prevent work-related injuries and illnesses among temporary workers*
 - » *Its purpose is to increase OSHA's focus on temporary workers in order to highlight the employers' responsibilities to ensure these workers are protected from workplace hazards*
- In all there are: 10 initiatives set by OSHA
 - » https://www.osha.gov/temp_workers/
 - » https://www.osha.gov/temp_workers/OSHA_TWI_Bulletin.pdf



OSHA Temporary Worker Initiatives

- Identifying Employer Responsibilities
 - » *It is a fundamental principle that temporary workers are entitled to the same protections under the OSH Act as all other covered workers*
 - » *The staffing agency and host employer must work together to ensure that OSH Act requirements are fully met and that the temporary worker is provided a safe workplace*
- Potential impact of an OSHA investigation
 - » *OSHA will consider issuing citations to either or both of the employers if:*
 - A temporary worker is exposed to a volatile condition, and
 - The worker is considered to be employed by both a staffing agency and a host employer



Independent Contractor vs. Temporary Worker

- Independent contractors are:
 - » *Paid by businesses for providing services, like consulting, but are not considered employees*
 - » *Some independent contractors can remain contracted for years, and the line between contractors and employees can blur*
 - » *Specifically not temporary workers because they do not fill out timesheets, or are paid and taxed using a W-2*
- Misclassification can be costly. If unsure, you can always contract them through an agency (even long term)



Duties of Staffing Company and Client

The Staffing Company

- Pays the employee
- Pays and withholds payroll taxes
- Provides workers compensation
- Provides benefits and pension plans (if applicable)
- Ensures civil rights compliance
- Has the right to hire and fire
- Hears and acts on complaints from the employee about working conditions
- **Provides general training (SAFETY)**

The Client

- Supervises and directs day-to-day work
- Controls working conditions at the work site
- Ensures a safe work site, including civil rights compliance by employees
- Determines the length of the assignment
- **Provides work site specific orientation and training, including SAFETY training**



Training – Client

- Host employers are:
 - » *provide temporary workers with safety training identical or equivalent to that provided to the host employers' own employees performing the same or similar work*
- Host employers must treat temporary workers like any other worker in terms of training and safety, as well as health protections



Host Safety Guidelines

- OSHA log/guidelines
- Accident investigation
- Safety walk-throughs
 - » *Proper knowledge of safety violations*
- Injury and illness prevention program
- Scope of work in contract
- PPE
- HazCom



OSHA 300 Log & Workers Compensation

- Agency responsibilities:
 - » *List injury on OSHA 300 Log*
 - Employer (agency) track lost time/restrictions
 - eFile with OSHA and annual summary (negotiated)
 - Communicate with OSHA should injury notice be required
 - Track injury with hours for rates (negotiated)
 - Manage and pay for compensable expenses
- Host employer responsibilities:
 - » *List injury on OSHA 300 log*
 - Stay in touch with agency to track lost time/restrictions
 - eFile with OSHA and annual summary (negotiated)
 - Add hours to include in injury rates (negotiated)



OSHA for Temporary Workers

- You have the same rights as permanent workers. The right to:
 - » *A safe workplace free of dangers*
 - » *Receive training in clear language that you understand*
 - » *Receive safety equipment*
 - » *Speak up about safety*
 - » *Report work-related injuries without being punished*
- OSHA protects all workers in the United States



OSHA for Temporary Workers

Do you have a safety concern?
Were you punished for speaking up about
safety or for reporting an injury?

Call OSHA. We can help. It's confidential.

1-800-321-OSHA (6742)
www.osha.gov



Scan the code
to learn more
about temporary
workers' rights



U.S. Department of Labor

OSHA[®] **Occupational
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What to Know About Workers Compensation

Brian McNulty
Johnson Financial Group

Insurance Considerations for Temporary Workers

- Workers Compensation - Alternate Employer Endorsement
- Auditing your Workers Compensation Policy
- Segregating Temporary Staff Payroll
- Your responsibility when Temporary Staff is injured



The Alternate Employer Endorsement

- An Alternate Employer Endorsement is:
 - » *“An endorsement added to a workers compensation policy that provides an entity scheduled as an alternate employer with primary workers compensation and employers liability coverage as if it were an insured under the policy.”*
- This endorsement is commonly used when a temporary help agency (the insured) is required by its customer (the alternate employer) to protect the alternate employer from claims brought by the insured's employees.

Citation - <https://www.irmi.com/term/insurance-definitions/alternate-employer-endorsement>



The Alternate Employer Endorsement

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

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(Ed. 2-89)

ALTERNATE EMPLOYER ENDORSEMENT

This endorsement applies only with respect to bodily injury to your employees while in the course of special or temporary employment by the alternate employer in the state named in Item 2 of the Schedule. Part One (Workers Compensation Insurance) and Part Two (Employers Liability Insurance) will apply as though the alternate employer is insured. If an entry is shown in Item 3 of the Schedule the insurance afforded by this endorsement applies only to work you perform under the contract or at the project named in the Schedule.

Under Part One (Workers Compensation Insurance) we will reimburse the alternate employer for the benefits required by the workers compensation law if we are not permitted to pay the benefits directly to the persons entitled to them.

The insurance afforded by this endorsement is not intended to satisfy the alternate employer's duty to secure its obligations under the workers compensation law. We will not file evidence of this insurance on behalf of the alternate employer with any government agency.

We will not ask any other insurer of the alternate employer to share with us a loss covered by this endorsement.

Premium will be charged for your employees while in the course of special or temporary employment by the alternate employer.

The policy may be canceled according to its terms without sending notice to the alternate employer.

Part Four (Your Duties If Injury Occurs) applies to you and the alternate employer. The alternate employer will recognize our right to defend under Parts One and Two and our right to inspect under Part Six.

*[Click here](#) to view an example of
an Alternative Employer Endorsement.*



Auditing Your Workers Compensation Policy

- During the audit process, you will want to furnish the auditor with a copy of your alternate employer endorsement
- You will want to make sure that all payroll related to temporary staff is removed from each classification in the audit worksheets



Your Responsibility When Temporary Staff is Injured

- Notify your staffing partner to coordinate care
- Provide care for the temporary worker the same as if they were your permanent staff
- Have their direct supervisor stay in regular communication with the worker during and after care.
- Coordinate with your safety liaison and your staffing partner if there is a potential OSHA violation





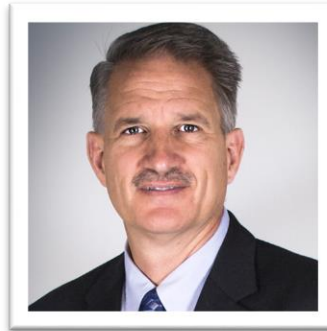
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[Click here](#) to view Maureen's bio.



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[Click here](#) to view Brian's bio.



Additional Resources

- Resources referenced throughout the presentation have been linked for easy access. Click the link below to open the corresponding resource:
 - » [OSHA Recommended Practices for Protecting Temporary Workers](#)
 - » [Alternative Employer Endorsement Example](#)
 - » [Employer Responsibilities to Protect Temporary Workers](#)
 - » [OSHA Injury and Illness Recordkeeping Requirements – Temporary Workers](#)





Thank you for attending!