

## OSHA's new focus on temporary workers

By George J. Miller  
Wyatt, Tarrant & Combs, LLP

On April 29, 2013, Thomas Galassi, Director of the U.S. Occupational Safety and Health Administration's Directorate of Enforcement Programs, issued a memorandum to all OSHA regional administrators announcing that the agency is making a concerted effort, using enforcement, outreach and training, to ensure that temporary workers are protected from workplace hazards.

He stated that this effort is the result of recent letters of interpretation, directives, and citations issued to employers for death or injuries to temporary workers, including one citation in which a 21-year-old temporary worker was killed on his first day on the job.

Predicated on the premise that all employers have a duty to provide necessary safety and health training to all workers regarding workplace hazards, the memorandum informs regional administrators that in order to determine whether employers are complying with their responsibilities, Compliance Safety and Health Officers are to be directed to determine during their inspections whether any employees are temporary workers and whether any of the identified temporary workers are exposed to a violative condition.

In addition, CSHOs should assess whether these workers have in fact received required training in a language and vocabulary they understand.

In order to capture this information, federal OSHA has created a new OIS code for temporary workers for use by CSHOs during inspections.

In addition, CSHOs are being asked to document the name of the temporary workers' staffing agency, the agency's location, and the supervising structure

under which the temporary workers are reporting (i.e., the extent to which the temporary workers are being supervised on a day-to-day basis either by the host employer or the staffing agency).

The memorandum can be found at: [https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=28613](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=28613).

This OSHA memorandum follows a November 21, 2012, interpretation letter from OSHA to Staffmark, a large staffing company based in Cincinnati, Ohio. That letter may be found at [https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=28598](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=28598).

This interpretation letter addresses several scenarios in which the temporary agency and host employer have varying amounts of supervisory authority and work site control, ranging from situations where the temporary agency has no managers on site to others in which it has either low-level supervisors or supervisors with significant authority over workers on site.

In each scenario, Staffmark asked OSHA whether the temporary agency or the host employer is responsible for (1) OSHA-required safety training; (2) OSHA hazard communication; and (3) OSHA injury reporting and log requirements.

In response, OSHA told Staffmark that, in general, both the staffing agency and host employer have the responsibility to ensure that training, hazard communication and recordkeeping requirements are fulfilled.

The extent of the respective responsibilities of the host employer and temporary agency depends upon the specific facts of each situation. With respect to training, OSHA said that in general it is the responsibility of the temporary agency to ensure that employees have received proper training.

By federal law, both the host employer and the staffing agency could be cited if OSHA finds that both were responsible for a violative condition.

However, in practice, even when the temporary agency has provided basic training, the host employer provides the work-place-specific training appropriate to the employees' particular tasks.

In order to fulfill its obligations in these circumstances, the temporary agency must have a reasonable basis for believing that the host employer's training adequately addresses potential hazards employees may be exposed to at the host worksite.

With respect to hazard communication (concerning hazardous chemicals), both the temporary agency and the host employer are responsible for ensuring that employees are effectively informed and trained regarding exposure to hazardous chemicals.

With regard to responsibility for recordkeeping, it depends upon which employer is supervising the temporary employee. If the host employer has full supervisory control over employees, then the host employer is responsible for injury and illness recording and reporting. But if the temporary staffing agency exercises day-to-day supervision over employees, then it is responsible for injury and illness recording. In other scenarios where both the staffing agency and host employer share the supervisory role, OSHA states that they should reach an agreement regarding their respective responsibilities.

Finally, OSHA points out that the Occupational Safety and Health Act (like the Kentucky law, Ky. Rev. Stat., Ch. 338) contains a general duty clause which would be the basis for citing both the host employer and the staffing agency if OSHA finds that both employers were responsible for a violative condition. ▲

## CITATIONS & FINES

### PADUCAH & LOUISVILLE RAILWAY

200 Clark St., Paducah

Inspection site: U.S. 44, Louisville

4-26-13

**\$42,000**

#### Serious

- The Site Safety and Emergency Response Plan and the CTEH Air Sampling and Monitoring Work Plan for work on train derailment did not contain detailed information on personnel roles nor lines of authority for employees performing hot work between derailed train cars; subcontractor employees were using oxy-acetylene cutting torch around flammable materials, resulting in a flash fire that burned one employee and two subcontractor employees. \$7,000
- Emergency response plan did not address site security and

control; employee and two subcontractor employees were burned during flash fire that resulted from using oxy-acetylene cutting torch in unsafe area. \$7,000

- The senior emergency response official was not in charge of site-specific Incident Command System. \$7,000
- Individuals in charge of Incident Command System did not identify, to the extent possible, hazardous substances or conditions at train derailment site, and did not address, as appropriate, site analysis, engineering controls and exposure limits for hazardous substance handling. \$7,000
- Employer did not implement appropriate emergency operations and did not ensure employees used proper PPE while working at train derailment site; sampling documented butadiene levels above short-term exposure limit, and employees were not using respiratory protection. \$7,000
- Specialist employee who provided on-site technical advice or assistance was not properly trained annually in the hazards of specific hazardous substances. \$7,000

### FRANKLIN PRICE

P.O. Box 1347, Liberty

Inspection site: 3039 Breckenridge Lane, Louisville

4-15-13

**\$21,000**

#### Serious

- Three employees working in 17-foot deep trench were not properly trained in excavation safety. \$3,500
- Three employees were working in a trench at least 17 feet deep with heavy equipment nearby and no hardhats, while gravel was being dumped from above, and no cave-in protection. \$3,500
- Five employees were working in trench at least 17 feet deep, which had standing water in the bottom and water seeping from the walls, without adequate precautions to protect employees. \$3,500
- Excavation was not inspected by a competent person. \$3,500
- Five employees were working in trench at least 17 feet deep with no cave-in protection. \$3,500
- Portable ladder used for access and egress from trench did not extend above the top of the excavation. \$3,500

### WASTE WATER RECYCLERS

P.O. Box 1113, Mt. Sterling

Inspection site: 1140 Levee Road, Mt. Sterling

4-8-13

**\$20,500**

#### Serious

- Right ocular of emergency eyewash was blocked and did not produce water. \$3,500
- Employer did not ensure emergency eyewash was inspected monthly. \$0
- Employer did not provide chemical aprons for employees han-