

# ***Safety for Temporary and Summer Help Employees not to be overlooked***

***Presented By: David Schott, CSP  
Ted Carew, CHST***



TOTAL HEALTH & SAFETY SOLUTIONS, LLC



***Safety's not scary, it's human.***

# HIRING SEASONAL EMPLOYEES



## PROS



Lower payroll costs



Less risk and worry



Trial employment



## CONS



Uncommitted workers



Less training



Lack of loyalty

**TEMPORARY**  
JOB OPPORTUNITIES



*Safety's not scary, it's human.*

# Why we need to Talk

---



- Temporary workers have a higher overall injury rate than permanent workers in the same occupations. NIOSH researchers analyzed over 1.3 million workers' compensation claims in Ohio from 2001–2013, including 45,046 claims from workers employed by temporary service agencies, to compare the injury risk for temporary and permanent workers.
- In 2017, 377 workplace-related deaths occurred among those under the age of 24 (BCSP Foundation, n.d.).
- In 2017, *high-school-aged students were 1.25 times as likely to suffer a work-related injury requiring treatment in an emergency department compared to workers age 25 and older* (NIOSH, 2020).
- In 2018, the rate of nonfatal injuries was 110.3 per 10,000 fulltime employees for workers age 16 to 19 and 96.3 per 10,000 full-time employees for workers age 20 to 24 (NIOSH, 2020).
- In 2018, there were *22 deaths among workers younger than age 18—likely high school students* trying to develop themselves or provide for their families (NIOSH, 2020).

*Safety's not scary, it's human.*

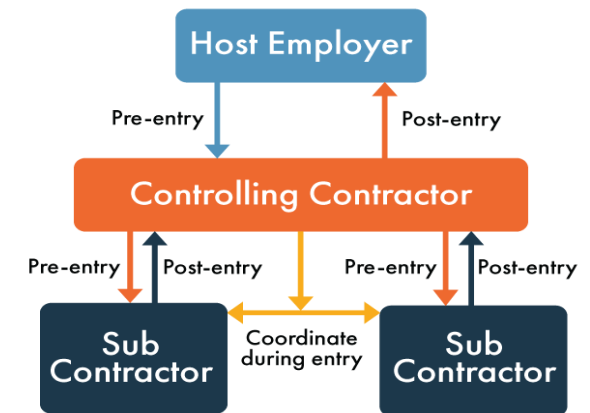




# What is a Host Employer?

- "Host employers need to treat temporary workers as they treat existing employees. Temporary staffing agencies and host employers share control over the employee and are therefore jointly responsible for temp employee's safety and health. It is essential that both employers comply with all relevant OSHA requirements."

-David Michaels, PhD, MPH, Assistant Secretary



*Safety's not scary, it's human.*

# Terminology

---



**Contract worker**- Provides a specific service to a company which must include supervision and assumes more responsibilities than a staffing company.

**Staffing**- Skilled/unskilled workers sent out under client/host regulations, host watches over worker, manages time/task, may or may not want to hire full-time.

**Associate** is preferable to “temp worker.”



*Safety's not scary, it's human.*





# Staffing Employment Agency



*An employer who is in business of employing individuals for the purpose of utilizing the services of the individuals for a temporary period.*

- Example: TH&SS contracts with a staffing agency to hire a temporary employee to fill a vacant position.



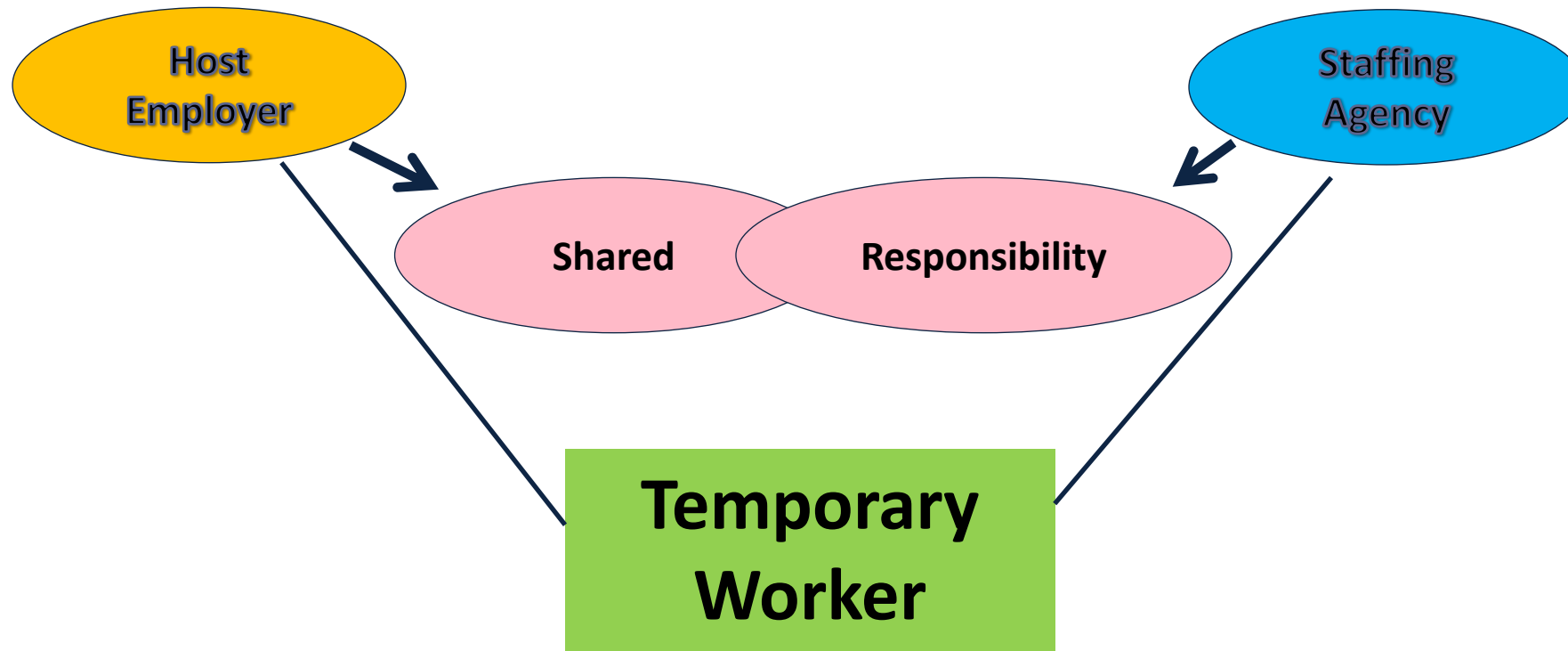
*Safety's not scary, it's human.*



# Theme: “Shared Responsibility”



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



*Safety's not scary, it's human.*



# WHAT IS A JOINT EMPLOYER?

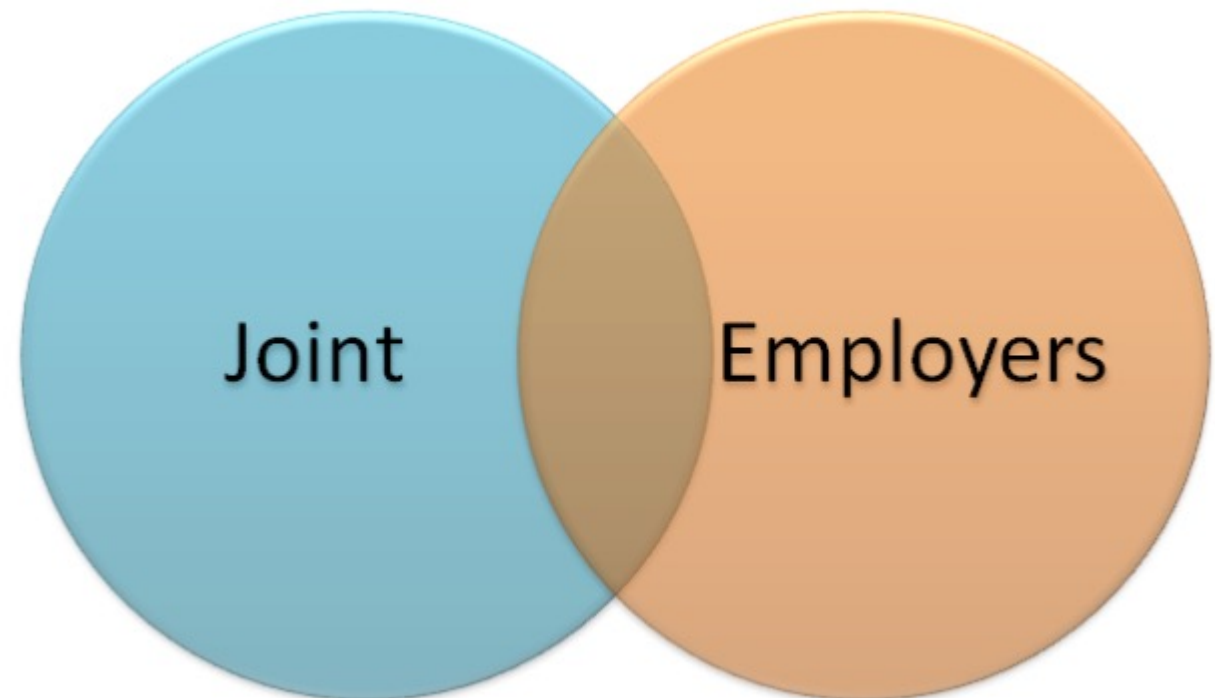


- **General Definition**

- Two or more entities share control and/or supervision of same employee(s)

- **Examples of Possible “Joint Employer” Situations**

- Parent corporation ↔ subsidiary
- Employer ↔ staffing agency (or PEO)
- Contractor ↔ subcontractor
- Owner ↔ management company
- Franchisor ↔ franchisee



*Safety's not scary, it's human.*

# Browning-Ferris Industries



## SHIFTING LEGAL LANDSCAPE: *Browning-Ferris Industries* (August 27, 2015)

- Decision broadened liability for companies that subcontract, outsource or use temp workers.
- A prime contractor can be found to be the “joint employer” of its subcontractor’s employees if it is found to exercise direct *or indirect* control over the subcontractor’s employees.



*Safety's not scary, it's human.*

# Staffing Companies



- **U.S. Department of Labor Cites Alabama Auto Parts Manufacturer And Staffing Agencies for Exposing Employees to Safety Hazards**
  - Willfully exposing employees to **caught-in and crushed-by hazards by requiring them to operate machines with non-functioning safety laser scanners.** These scanners are designed to prevent employees from placing their bodies inside dangerous zones during the operating cycle.
- **U.S. Department of Labor Cites Nebraska Staffing Agency Following Heat-Related Fatality**
  - The heat index reached 100 degrees on two days in July 2018. OSHA inspectors determined that the company failed to implement and train employees on a heat injury and illness prevention program. **OSHA cited the company for a serious violation of the General Duty Clause, and proposed penalties totaling \$11,641.**



*Safety's not scary, it's human.*

# Shared Responsibility



- Temporary workers are entitled to the same safety and health protections as direct hire employees.
- Both host employer and staffing agency are responsible for aspects of employee health and safety.
- *Mutual benefit*



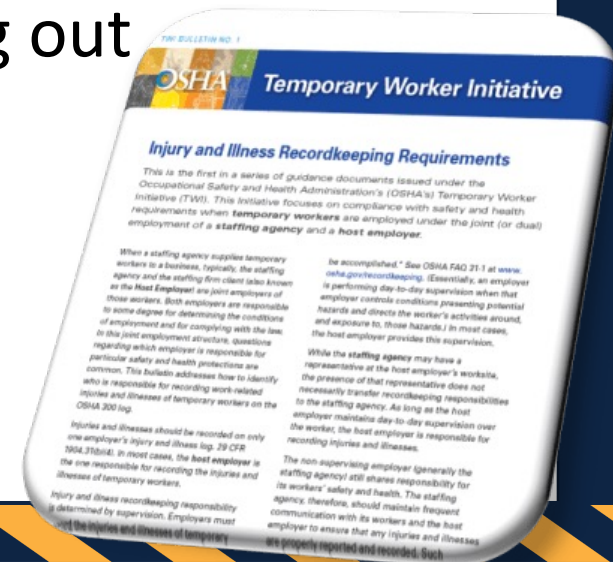
*Safety's not scary, it's human.*

# Temporary Worker Initiative



- Background
  - Cases include workers exposed to serious hazards without proper protection and training.
- Dangerous heat stress – VA & NJ
- Lack of essential personal protective equipment (PPE) PM
- Exposure to hazardous energy requiring lock out/tag out (LOTO)

*Safety's not scary, it's human.*



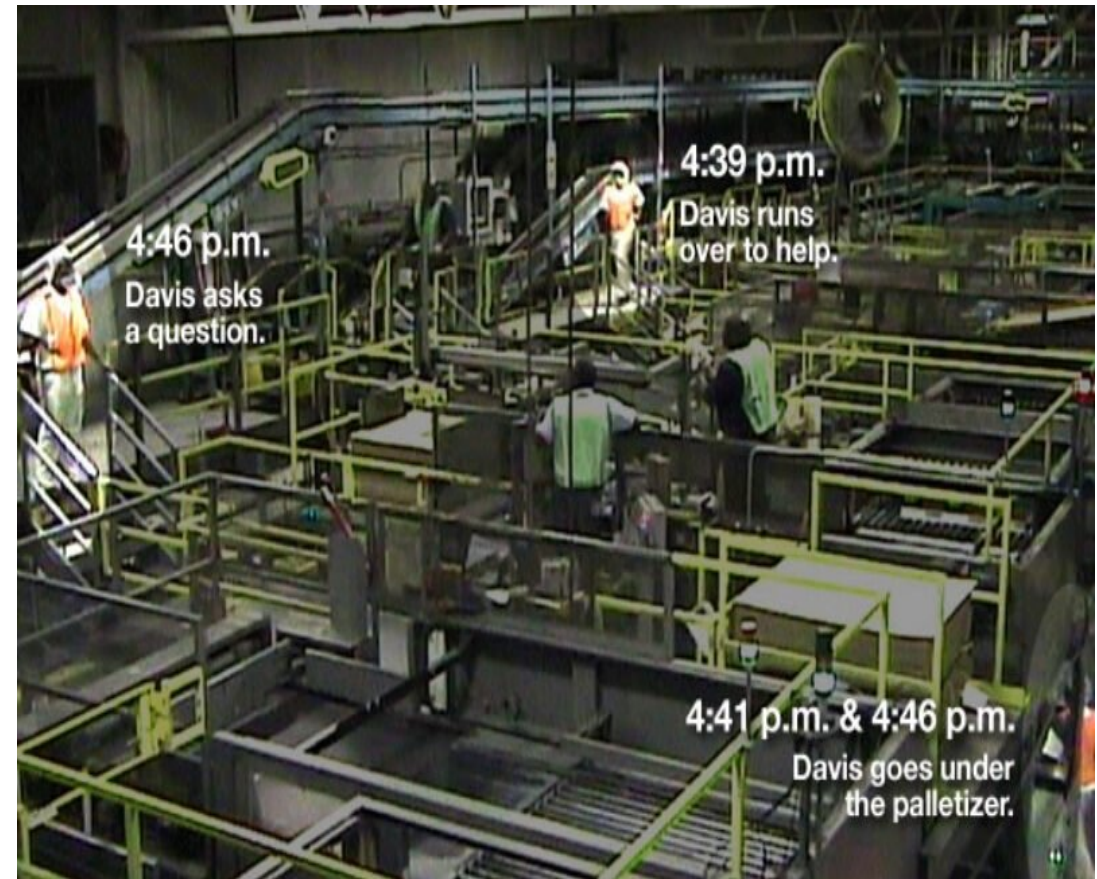


# Davis texted with fiancée just 90 minutes before he was crushed by a palletizer first day on the job



Dr. David Michaels

Lawrence Daquan Davis



*Safety's not scary, it's human.*



# Temporary Worker Initiative



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



## **US Labor Department's OSHA cites Jacksonville, Fla.-based Bacardi Bottling following death of temporary worker on 1st day**

The [OSHA citations](#), issued in February 2013, were accompanied by a proposed penalty of \$192,000. \$110,000 Bacardi Bottling paid.

*Safety's not scary, it's human.*



# Number of Young workers injured

146,000 people under the age of 24 are injured at work each year

400 young workers are injured every day

Between 15 – 24 you are twice as likely to get injured on the job as everyone over 25



Source: National Institute for Occupational Safety & Health (NIOSH)

***Safety's not scary, it's human.***

# Young Workers

---



- A 17-year-old assistant pool manager was electrocuted when she contacted an ungrounded electric motor. She was performing her work duty of maintaining the pH level of the swimming pool by adding soda ash to the water. Standing barefoot on the wet concrete floor of the pump room, she filled the plastic drum with water, plugged in the mixing motor and placed the motor switch in the on position. In the process of adding **soda ash to the drum, she accidentally contacted the energized mixing motor with her left hand and created a path to ground for the electrical current. She was electrocuted and died.**



*Safety's not scary, it's human.*

# Young Workers



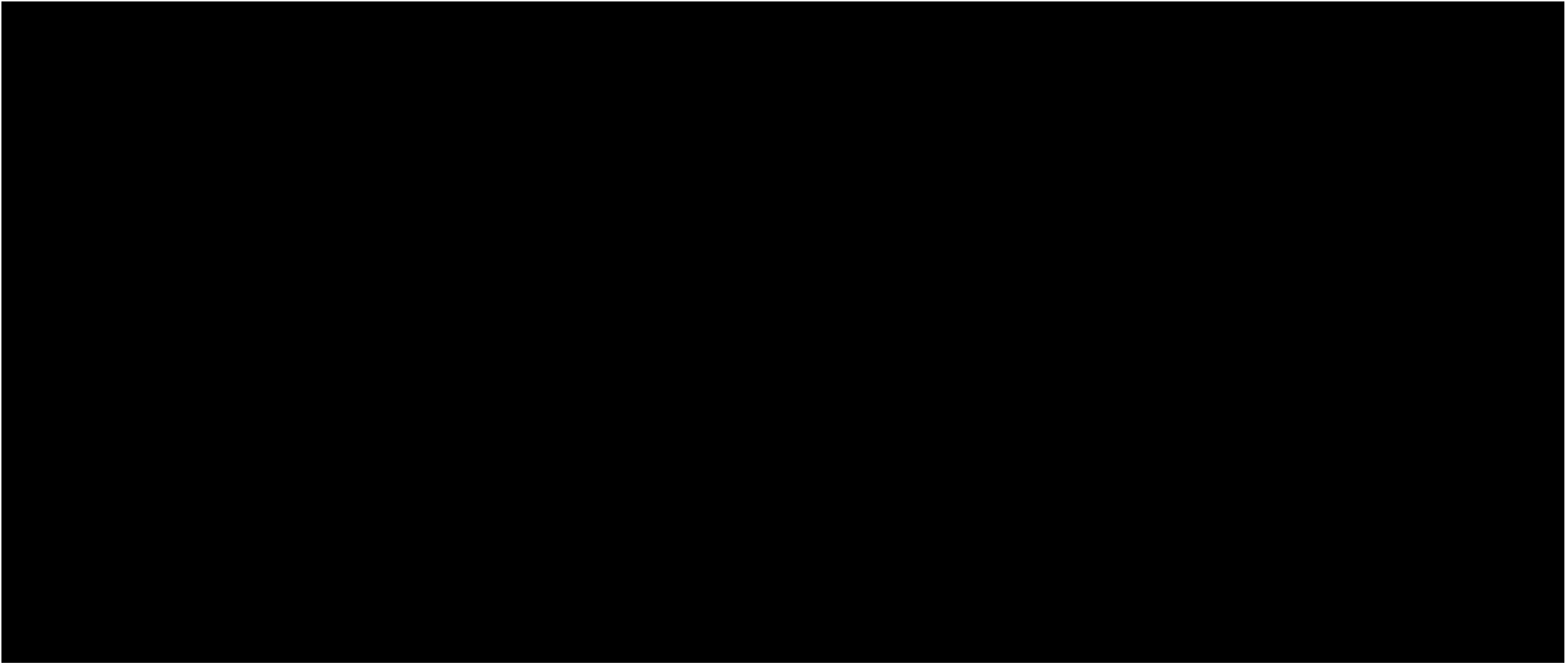
- Two young workers (ages 14 and 19) were killed at a grain storage facility in the Midwest when they were sent into a grain bin to “walk down the corn.” The grain bin was being emptied, and the workers’ task was to break up clumps by walking on them to make the corn flow out of the bin. The workers were not provided safety harnesses, and the machinery used for evacuating the grain was running. The suction created by the flowing grain pulled them in like quicksand and suffocated them. ***Workers should never be inside a grain bin when it is being emptied out, because a sinkhole can form and pull down the worker in a matter of seconds.*** OSHA standards prohibit this dangerous practice. This company ignored that rule as well as other protective safety requirements. In addition, child labor laws made it illegal for this company to employ a 14-year-old to work in a grain silo.

*Safety's not scary, it's human.*



# Young Person – Mallory 14

---



*Safety's not scary, it's human.*



# OSHA's Temporary Worker Initiative



- 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.
- Initiative intends to clarify the “shared” duty of host employer and staffing agency



*Safety's not scary, it's human.*



# 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 - "that the host employer is obligated to record any recordable injuries and illnesses if it "supervise[s] these employees on a day-to-day basis."
  - Training - the temporary agency has provided basic training, the host employer provides the workplace-specific training appropriate to the employees' particular tasks
  - Hazard Communication - Both the temporary agency and the host employer are responsible for ensuring that employees are effectively informed and trained regarding exposure to hazardous chemicals. (Reference LOI <https://www.osha.gov/laws-regs/standardinterpretations/1994-02-03> )

**OSHA Response:** In general, both the temporary agency and the host employer have the responsibility to ensure that training, hazard communication, and recordkeeping requirements are fulfilled.



<https://www.osha.gov/laws-regs/standardinterpretations/2012-11-21>



*Safety's not scary, it's human.*

# Responsibilities



## Employer's job is to provide:

- A safe and healthy workplace
- Information on hazards in the workplace
- Training about health and safety
- Training about emergency procedures
- Personal protective equipment (PPE)
- Payment or medical care if you get hurt or sick at work

## Employee's Job is to:



Follow all safety procedures



Report any health and safety hazards to a supervisor



Keep work areas clean



Know what to do in an emergency



Use personal protective equipment when required



Ask questions when you feel uncertain or unsafe



*Safety's not scary, it's human.*



# Examples of Shared Duties for Safety



- Hazard Communication
  - Staffing Agency trains on generic program elements
  - Host Company trains on specific chemicals used
- Lockout Tagout
  - Staffing Agency trains on awareness
  - Host Company (if applicable) provides machine specific procedures
- Emergency Action Plans
  - Staffing agency provides general concepts
  - Host provides specific routes of exit, etc.
- Accident Reporting
  - Staffing Agency: What, when to report
  - Host Company: To whom to report, how to report



*Safety's not scary, it's human.*

# Who is responsible for temporary worker safety and compliance?



- In most cases, staffing agencies and host employers are jointly responsible for maintaining a safe work environment for temporary workers — including, for example, ensuring that OSHA's training, hazard communication, and recordkeeping requirements are fulfilled. OSHA can hold both employers responsible for violative condition(s).

## Avoid Temporary Worker OSHA Citations

Most construction contractors try to classify their temporary employees correctly. However, it can be confusing and some make honest mistakes, while others may try to game the system.

Because of this, OSHA has cracked down on categorizing temporary employees.



*Safety's not scary, it's human.*

# Violation Findings Staffing Companies

---



- Most frequent citations to staffing companies:
  - Hazard Communication
  - Occupational Noise Exposure
  - Personal Protective Equipment (PPE)



*Safety's not scary, it's human.*

# Violations at Worksites with Temporary Workers



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



*Safety's not scary, it's human.*



# 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)



*Safety's not scary, it's human.*

OSHA  
300A  
ILLNESS  
REPORTABLE  
RECORDABLE  
WORK-RELATED  
AMPUTATION  
FATALITY  
BEYOND FIRST AID  
HOSPITALIZATION  
DAYS AWAY  
LOG  
INJURY  
TRANSFERRED  
MEDICAL REMOVAL  
RESTRICTED



- **29 CFR 1904.2(a):** The log and summary of occupational injuries and illnesses (OSHA Form No. 200 or its equivalent) was not completed in the detail provided in the form and the instructions contained therein: '1904.2(a) is AFFIRMED as an Another than serious@ violation of the Act, and a penalty of **\$180.00 is ASSESSED**.
- **29 CFR 1910.1040(f)(2)(i):** Hepatitis B vaccination was not made available after the employee had received the training required in 29 CFR 1910.1030(g)(2)(vii)(I) or within 10 working days of initial assignment to employees who had occupational exposure to blood or other potentially infectious materials: '1910.1030(f)(2)(i) is AFFIRMED as a A serious@ violation of the Act, and a penalty of **\$6,300.00 is ASSESSED**.
- **29 CFR 1910.1030(g)(2)(i):** The employer did not ensure that employees with occupational exposure participated in a training program. '1910.1030(g)(2)(i) is AFFIRMED as a A serious@ violation of the Act, and a penalty of **\$6,300.00 is ASSESSED**.
- **29 CFR 1910.1200(h):** Employees were not provided information and training as specified in 29 CFR 1910.1200(h)(1) and (2) on hazardous chemicals in their work area at the time of their initial assignment and whenever a new hazard was introduced into their work area: '1910.1200(h) is AFFIRMED as a A serious@ violation of the Act, and a penalty of **\$4,900.00 is ASSESSED**.

# Who must train temporary workers?



- In general, it is the responsibility of the staffing agency to ensure that employees have received proper training. In practice, even when the staffing agency has provided basic training, the host employer provides the workplace-specific training appropriate to the employees' particular tasks. For example, a staffing agency can provide general HazCom training, but only the host employer can train where the SDSs are kept in the facility, the chemicals used, etc.



TWI BULLETIN NO. 4

TRAINING



*Safety's not scary, it's human.*

# 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



*Safety's not scary, it's human.*



# 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



*Safety's not scary, it's human.*

# OSHA Requirements

---



*To whom do the following OSHA requirements apply?*

Recordkeeping

Fines

Medical surveillance

Safety Training (General and Specific)



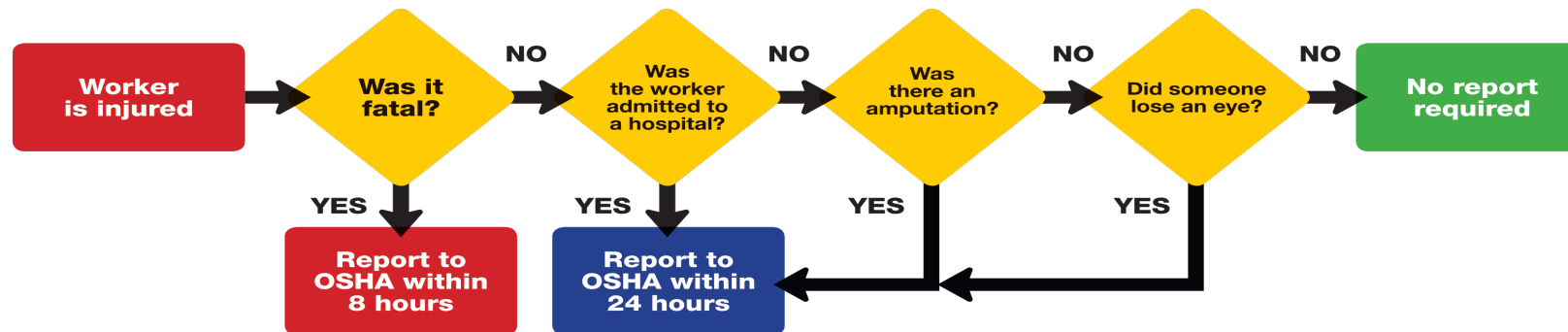
*Safety's not scary, it's human.*



# Recordkeeping



Whoever provides day-to-day supervision of the employee is responsible for recordkeeping.



## HOW DO I REPORT?

1. Call 1-800-321-OSHA (6742) or
2. Call your nearest area office during normal business hours or
3. Report online at: [www.osha.gov/report\\_online](http://www.osha.gov/report_online)



OSHA letter of interpretation dated June 23, 2003

<https://www.osha.gov/laws-regs/standardinterpretations/2003-06-23>

*Safety's not scary, it's human.*

# Fines

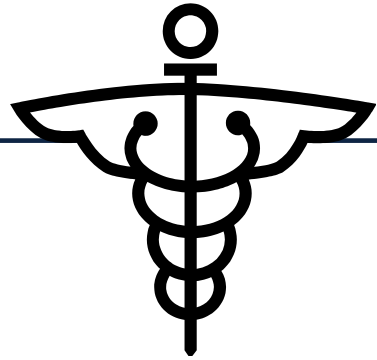
---



Fines may be levied to the host employer and/or staffing agency depending on the circumstances.



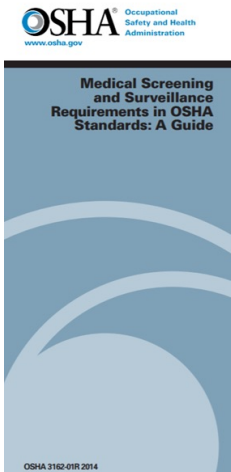
*Safety's not scary, it's human.*



# Medical Surveillance



When medical surveillance or monitoring is necessary, the host employer must offer and perform this requirement.

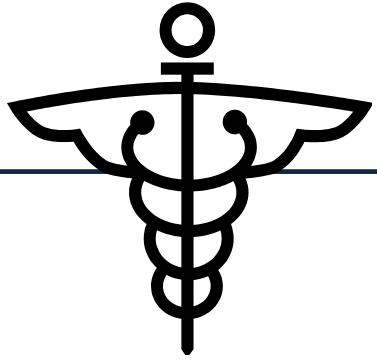


OSHA interpretation letter dated February 3, 1994.

<https://www.osha.gov/laws-regs/standardinterpretations/1994-02-03>

*Safety's not scary, it's human.*





# Medical Surveillance (continued)



The staffing agency must ensure that the records of the required medical surveillance or evaluations are maintained in accordance with the appropriate OSHA standards.



OSHA interpretation letter dated February 3, 1994.

<https://www.osha.gov/laws-regs/standardinterpretations/1994-02-03>

*Safety's not scary, it's human.*

# Safety Training

---



*What is the general rule for generic training?*

The staffing agency are expected to provide some generic training.



*Safety's not scary, it's human.*



# Safety Training (continued)



*Who is responsible for site specific training?*

The host employer must still certify that the required training has been provided "when the employee has demonstrated proficiency [to the employer] in the work practices involved."



*Safety's not scary, it's human.*

# Safety Training (continued)



## General –

1. Safe lifting practices
2. Ergonomics
3. Personal protective equipment
4. Electrical safety
5. Machine guarding
6. Fall hazards and protection
7. Chemical hazard communication



*Safety's not scary, it's human.*

# PPE



*Who is responsible for PPE?*

- Host employer is responsible for providing PPE for site-specific hazards to which employees may be exposed.
- PPE can be a contractual issue between the host employer and staffing agency/PEO, but enforcement is the responsibility of the host employer.



*OSHA letter of interpretation dated February 3, 1994.*

<https://www.osha.gov/laws-regs/standardinterpretations/1994-02-03>

*Safety's not scary, it's human.*

# Safety and Health Programs

---



- Injury and illness prevention program
- Staffing agencies and host employers
- Specific to hazards of work being performed
  - Bloodborne pathogens
  - Hearing Conservation
  - Respiratory Protection
  - Hazard Communication
  - Control of Hazardous Energy (Lockout/Tagout)
- Construction
  - 29 CFR 1926 Subpart C, General Safety and Health Provisions
  - Requirements for accident prevention programs



*Safety's not scary, it's human.*

# Shared Responsibility for Worker Safety and Health

---



- ALL workers must receive equal protection
- Expectation: Host and the staffing companies will contractually assign responsibilities
- Consider which employer can best prevent hazards and fulfill compliance with OSHA
- Due diligence must be exercised to inquire and verify that full compliance has been achieved



*Safety's not scary, it's human.*





# Verification and Assessments

---



- Effectiveness of health and safety programs
- Tracking metrics – proactive v. reactive indicators
- Annual basis
- Internal and/or external parties
- Prioritized recommendations for improvement
- Contract review

*Safety's not scary, it's human.*

# Scenario #1

---



- A manufacturer of metal cans, Ted's Can Co., needs machine operators for a short-term increase in production. Ted's Can Co. contracts with Industrial Staffing, a staffing agency, to provide machine operators to work shifts on a temporary basis. Industrial Staffing hires ten operators with minimal knowledge of English and sends them to work onsite at Ted's Can Co. The staffing agency also hires a person to act as the temporary workers' team lead who will translate the employers' orders and any provided training and perform administrative duties such as time and attendance tracking. At the worksite, a supervisor from Ted's Can Co. assigns each of the temporary workers to a particular machine. The supervisor also controls and checks on the employees' work throughout their shift. On their second day, one of the temporary workers suffers a finger amputation injury from an inadequately guarded machine press.

- ***Who is responsible for recording this injury?***



***Safety's not scary, it's human.***

# Scenario #1 Answer

---



- For recordkeeping purposes, Ted's Can Co. must record the injury on its injury and illness log. ***The key fact in this scenario is that Ted's Can Co. supervises and controls the day-to-day work of the temporary employees at its facility.*** The team leader provided by the staffing agency is not empowered to modify or override the host employer's directions and therefore is not considered a supervisor under OSHA's recordkeeping regulation. While Ted's Can Co. should inform the staffing agency of the injury, the staffing agency should not record it on its own log because the injury should only be recorded on one set of injury and illness logs. **Should Ted's Can Co. refuse or ignore its duty to record, the company may be subject to an OSHA citation.**



*Safety's not scary, it's human.*

# Scenario #2

---



- A metal equipment manufacturer, Ted's Works Co.(TWC), needs lathe operators for a short-term increase in production. The company contracts with Industrial Staffing to provide workers to work shifts on a temporary basis. Industrial Staffing hires ten workers and sends them to work at TWC. When a lathe is operated, metal splinters can fly off and hit the worker. There is no mention of PPE in TWC's contract with Industrial Staffing and no safety glasses are provided to the workers. A week later, a temporary worker mentions to an Industrial Staffing representative that safety glasses have not been provided. When Industrial Staffing discusses this with TWC, TWC refuses to supply the glasses.

- ***What are the next steps?***

*Safety's not scary, it's human.*

# Scenario #2 Answer

---



Because an eye injury hazard exists, adequate PPE must be provided to both the permanent and temporary lathe workers by their employer(s). *Because TWC controls the lathe, supervises and controls the day-to-day work of the temporary employees, and is, overall, best situated to control the hazard, TWC is also best positioned to select, provide, and maintain adequate PPE for those operating and working in the vicinity of the lathes and therefore may be subject to OSHA citations.* Industrial Staffing, in turn, should be familiar with TWC's operation and the specific work that the temporary workers are doing. The staffing agency must take reasonable steps to ensure that TWC is providing adequate PPE and can do so by communicating with TWC and the temporary workers. Thus, as should happen, here the staffing agency discovered TWC's lapse in safety protection reasonably quickly and, upon discovery, immediately addressed the issue with TWC. If TWC continues to refuse to provide the PPE, Industrial Staffing has the choice of supplying the PPE itself or withdrawing its workers from the site. If Industrial Staffing does neither, it may also be subject to OSHA citations. If TWC did not want to be the provider of PPE, it could have initially negotiated with Industrial Staffing for the staffing agency to provide the safety glasses (and any other necessary PPE) so long as TWC ensured that the PPE provided by Industrial Staffing was adequate for the worksite's hazards. TWC should understand, however, that in this scenario, with its knowledge and control over the hazards and workers as outlined above, the host itself holds primary responsibility for providing the PPE because it is in a better position to do so. Should OSHA discover that the workers are using the lathe without eye protection, both employers may be subject to OSHA citations. **Because TWC itself has primary responsibility for providing the PPE, by neither providing PPE nor having the staffing agency supply the PPE, TWC would be subject to OSHA citations. By failing to a) establish that TWC would provide PPE, and b) diligently act to maintain.**

*Safety's not scary, it's human.*

# Recommended Practices

---



- Decide whether you need to outsource
- Carefully select your business partners
- Have legal counsel review contracts with third party companies – be sure to address (and document)
  - Extent of control
  - Cooperation in the event of an agency investigation and/or litigation
  - Coordination of insurance coverage
  - Primary and secondary liability
- Designate an individual to monitor third party arrangements
  - Know the division of control
  - Stick to the contract



Reassess your needs periodically

*Safety's not scary, it's human.*



# Recommended Practices

---



- Evaluate Host Employers' Worksite
- Train Agency Staff to Recognize Safety and Health Hazards
- Ensure each Employer Meets Standard of the Other
- Assign Responsivities/ Define Scope of Work in Contract
- Injury & Illness Reporting and Tracking
- Training including new-project orientation (Host Train same as current employees)
- Injury and illness Prevention Programs
- Maintain Communication
- Have a written safety and health program

**Recommended Practices for  
Safety and Health  
Programs**



*Safety's not scary, it's human.*

# 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.
- Treat young employees as if they are young with no experience or knowledge of the work or safety.

**SUMMARY**

*Safety's not scary, it's human.*

# Free Resources



<https://www.osha.gov/sites/default/files/publications/OSHA3735.pdf>

<https://www.osha.gov/temporaryworkers/>



<https://player.captivate.fm/show/e68e503e-3389-4cbe-b36b-fc81c561a9ea/#>



**To Teach or To Coach with Wyatt Bradbury** EPISODE 27



**YOUNG WORKER SAFETY** Our Communities & Youth Need Us By Wyatt Bradbury  
PSJ PROFESSIONAL SAFETY FEBRUARY 2021 assp.org

<https://americanstaffing.net/staffing-industry/safetymatters/>



*Safety's not scary, it's human.*

# Free Resources

---



<https://blogs.cdc.gov/niosh-science-blog/2015/06/16/temp-workers/>

National Institute for Occupational Health and Safety



<http://www.nsc.org>

National Safety Council



<https://www.assp.org/news-and-articles/safety-news-you-need-leadership-and-partnerships>



*Safety's not scary, it's human.*



Thank you!

*Safety's not scary, it's human.*