

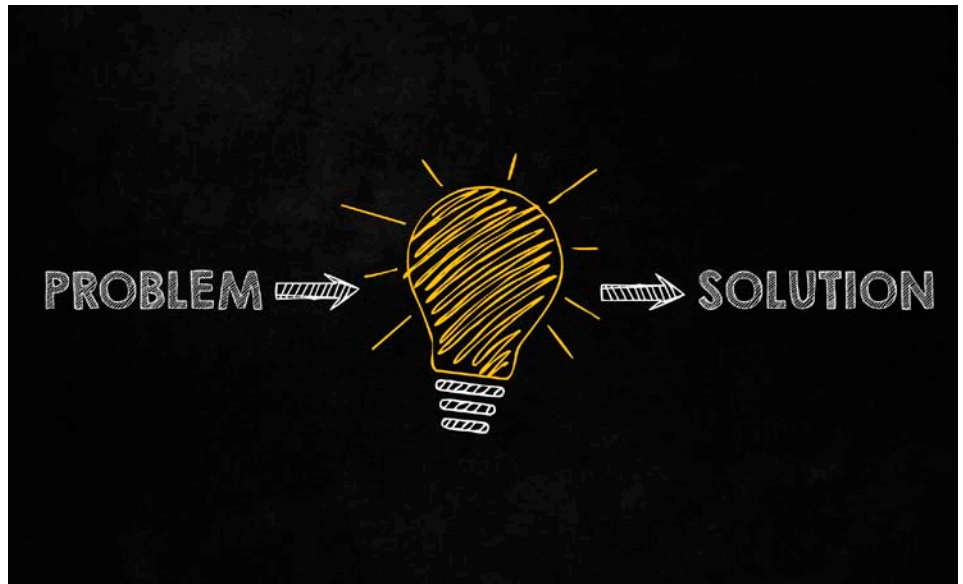
## The Temporary Workforce

### Existing Challenges & Solutions

By Diana Cortez and Elisiona Valle

As early as the 1940s, the temporary workforce concept began emerging to fulfill industry needs. The demand for temporary workers has since evolved, but the inequalities experienced by some of these workers remain the same. In many cases, temporary workers are treated at a subpar level as compared to permanent workers. **Temporary workers** often receive lower pay, little job security and limited to no benefits (Olson, 2011).

Temporary/staffing agencies that are responsible for employing temporary workers are exponentially growing. Temporary workers have not benefited from the agencies' increased profits. One of the most noticeable disparities among these workers is the increase in injuries and fatality rates. Under the **OSH Act**, temporary workers are entitled to the same protections as regular, permanently employed workers (Grabell, Pierce & Larson, 2013; Greenhouse, 2014). OSHA says workers should not be placed in unfamiliar or hazardous work sites without proper safety training. Options are available to help host employers and temporary agencies implement effective safety and health programs.



**The demand for temporary workers has evolved, but the inequalities experienced by some of these workers remain the same.**

Specialized temporary agencies provide professional workers such as college professors, doctors, accountants and information technology specialists for positions in industries such as academia, hospitals, law firms and technology corporations (Grabianowski). General temporary agencies, which are more common, provide workers

to industries, such as warehousing and manufacturing, where little to no skills are needed. These workers are more vulnerable to being injured and killed on the job. They are also generally paid less than full-time employees and have very little or no benefits such as vacation, holiday pay, health insurance, retirement or a 401k plan (Greenhouse, 2000).

Temporary workers are sent to jobs lasting anywhere from a day to several years.

In 2000, **Microsoft settled a class-action lawsuit** from employees who claimed that the company had classified them as temporary workers as a way to deny them benefits. The temporary workers, who had worked there for years, claimed they should have received benefits equal to Microsoft's permanent employees. The \$97 million settlement was the largest ever received by temporary workers.

Workers, temporary agencies and host employers have an intricate relationship. Temporary agencies are responsible for employing the worker, assigning them to a company (a host employer), and paying the worker. Host employers contract with temporary agencies to fill vacant positions. In most cases, the host employer assigns, directs and supervises the temporary worker within the work site. Host employers benefit from hiring temporary employees by not having to pay for health benefits or workers compensation.

Both the host and temporary agency believes that the other group is responsible for the worker (Harris, 2013). ProPublica investigated the temporary worker issue and concluded, "When temp workers do get injured on the job, the temp firm and the company fight with each other over who is responsible, sometimes even delaying emergency medical care while they sort it out" (Grabell, et al., 2013). This is seen in many cases, where temporary workers are seriously injured or killed at work causing great concerns for this workforce (OSHA).

According to Bureau of Labor Statistics (BLS), 2.8 million workers are employed by temporary agencies. During the past several years, temporary workers have died at host employer work sites in horrific incidents that were preventable.

OSHA says employers have the responsibility and obligation to provide their employees with a safe and healthful workplace free from recognized hazards.



OSHA clarified agencies' and host-employers' shared responsibility of temporary workers in a 1994 letter to the National Employment Service Corp.:

OSHA considers temporary employment agencies who send their own employees to work at other facilities to be employers whose employees may be exposed to hazards. Since it is your company, which maintains a continuing relationship with its employees, but another employer (the client) who creates and controls the hazards, there is a shared responsibility for assuring that your employees are protected from the workplace hazards. The client has the primary responsibility of such protection. The "lessor employer" likewise has a responsibility under the Occupational Safety and Health Act.

Client employers would be responsible for providing PPE for site-specific hazards to which employees may be

exposed. However, again, the client may specify the services that it wants the lessor employer to supply, including provision of PPE for the placed employees. Contracts with the client employer should clearly describe the responsibilities of both parties in order to ensure that all requirements of OSHA's regulations are met

Temporary workers are at increased risk of work-related injury and illness, particularly during their first day and weeks on the job as seen from reports and investigations conducted by OSHA. For example, on his first day on the job, 21-year-old Lawrence Davis was crushed to death while cleaning glass inside a palletizer; Samir Storey, 39, was exposed to hydrogen sulfide while cleaning the inside of a tank (OSHA, 2013); and on Carlos Gamboa's first day, the 28-year-old instantly died when he slipped and fell while dismantling a shelf (Grabell, et al., 2013).

Temporary workers are repetitiously new employees due to the nature of the temporary/staffing agency industry. Their work assignments change daily, weekly or monthly from each employer's needs.

Some employers use temporary workers to avoid meeting their employer obligations under worker protection laws, which includes compliance with safety and health regulations under the OSH Act. These workers are not treated the same as traditional full-time workers.

Temporary workers are placed in the most hazardous jobs making them vulnerable to workplace

hazards and retaliation when voicing their concerns about these conditions (Grabell, et al., 2013; Jamieson, 2013). Consequently, OSHA joined forces with NIOSH. In 2014, the agencies released and recommended practices for both the temporary staffing agency and host employers to better protect temporary worker through collaboration.

OSHA launched a **Temporary Worker Initiative** in 2013 to address and prevent severe and fatal occupational injuries. The initiative aims to ensure temporary agencies and host employers understand their safety and health responsibilities under the OSH Act. This initiative is multifaceted and information can be found on OSHA's Temporary Workers web page.

On the same day the Temporary Worker Initiative was launched, OSHA issued a memorandum instructing OSHA compliance safety and health officers (CSHO) to assess whether employers who use temporary workers are complying with their responsibilities under the OSH



**Workers, temporary agencies and host employers have an intricate relationship.**

Act. CSHOs are supposed to inquire during inspections whether the workplace uses temporary workers and determine if they are being exposed to any violative conditions. These inspections are coded to capture the information obtained during investigations of work sites that employ temporary workers.

In a memo, OSHA specifically defined temporary workers as those who are working under a host employer/temporary agency employment structure; supplied to a host employer and paid by a temporary agency. CSHOs are also asked to document the name of the temporary agency, the agency's location and the supervising structure under which the temporary workers are reporting. The supervising structure includes who the temporary worker reports to, who directs the work and who supervises the temporary worker on a day-to-day basis, whether it is the host employer or the temp agency. The enforcement activities and the information gathered aids to identify and protect the temporary worker (OSHA, 2013).

On May 21, 2013, OSHA signed an alliance with **American Staffing Association (ASA)** to protect temporary workers from workplace hazards. Through this alliance, OSHA and ASA inform workers about their rights, and educate temporary/staffing agencies and their clients (host employers) on their responsibilities to protect workers under the OSH Act. They develop and distribute OSHA guidance and information on the recognition and prevention of workplace hazards to staffing agencies, host employers and temporary workers. In July 2013, OSHA and ASA held a public webinar discussing worker rights, employer responsibilities, available resources and the alliance's goals (OSHA, 2013).



According to ASA, more than 17,000 temporary/staffing agencies in the industry supply 11 million workers in various businesses throughout the U.S. The industry contributes almost \$120 billion to the U.S. economy (ASA).

OSHA has also reached out to stakeholders including **ASSE, NIOSH, National Advisory Committee on Occupational Safety and Health**, and the **Advisory Committee on Construction Safety and Health** to better understand the nature of the growing industry and to increase awareness of the responsibility shared by temporary agencies and host employers. These collaborative relationships will also assist in identifying and developing best practices, which will continue to be posted on **OSHA's Temporary Worker web page**.

OSHA has captured the following information that relates to inspection and investigations where temporary workers are employed:

- 1,823 inspections identified temporary workers exposed to safety and health hazards.

- 1,039 were the results of employee complaints and referrals;

- 60 were investigations for worker fatalities.

This data continues to change since some of the inspections are still open and new ones continue to be initiated.

The most frequently found violations at these workplaces where temporary workers were exposed to safety and health hazards are:

- electrical;
- lockout/tagout;
- machine guarding;
- fall protection;
- HazCom;
- powered industrial trucks;
- lack of employee training (please note that training must be provided in a language and method the worker understands).

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The temporary agency and host employer must communicate how they will address the safety and health protections for their shared workers. A summary of OSHA's recommended practices for both staffing agency and host employer to protect temporary workers is as follows:

- 1) Define the scope of work in the contract, including the tasks workers will perform.
- 2) Perform a hazard assessment of the worksite.
- 3) Develop and implement a safety and health program that includes temporary workers.
- 4) Conduct new project orientation and safety training that addresses the hazards to which temporary workers may be potentially exposed.
- 5) Maintain communication between staffing agency, worker and host employer.

All workers have an equal right to work in a safe and healthy workplace. They have a right to return home safely to their loved ones after their day's work. A worker should not have to die for a paycheck. Employers have an obligation and a responsibility to ensure that all their workers are protected against hazards while they are at work. OSHA can help employers meet their responsibility under the law. A plethora of information, guidance materials and publications on OSHA requirements and additional safety and health information are available on **OSHA's website**.

On [OSHA's Help for Employers web page](#), companies can access, hazard identification tools, compliance assistance resources by industry, e-tools on various industries and hazards, definitions, standard interpretations, and much more.

Additionally, OSHA offers [free and confidential on-site consultation services](#). Consultants will work with employers to identify workplace hazards, provide advice on compliance with OSHA standards, and assist in establishing injury and illness prevention programs.

ASA has also [developed resources](#) for its members (host employers) and workers:

- safety videos;
- staffing agreements specifically addressing worker safety;
- information on safety committees;
- worker safety resources;
- safe best practices for industrial, nurse, office, professional, and IT services and workers.

Other available resources provide helpful information:

- [NIOSH](#)
- [ASSE](#)
- [Susan Harwood Grants](#) offer free training materials and products.

The trend of hiring temporary workers will continue to increase, placing these individuals in work environments that may pose high hazards. There are solutions to help prevent injuries and fatal incidents in the workplace. The best practices, solutions and resources discussed in this article are only a sample of what is available to assist employers in enhancing their ability to assure safety for all workers. Host employers and temporary agencies must take a proactive approach to ensure the safety and health of their workers. ■

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