

You Should Know

Managing safety and risk when hiring temporary workers



Growth in employment of temporary workers

The use of temporary labor by employers and the number of workers who work directly for temporary staffing firms have grown significantly in the last several years. According to the American Staffing Association, around three million temporary and contract employees work for America's staffing companies during an average week. America's staffing companies hire 16 million temporary and contract employees annually.¹ This is an increase of 40% since 2012.

- Most staffing employees (73%) work full time, comparable to the overall workforce (74%).
- Six in 10 staffing employees (64%) work in the industry to fill in the gap between jobs or to help them land a job.
- One in five (20%) cite schedule flexibility as a reason for choosing temporary/contract work.

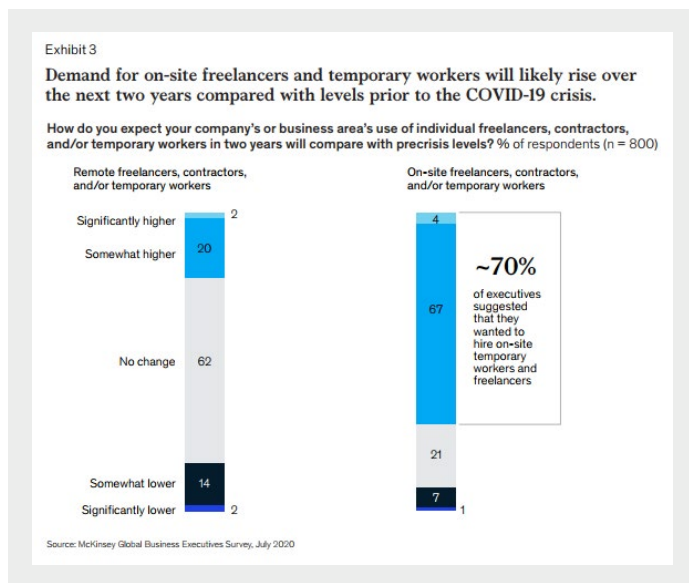
As the economy works to recover from the COVID-19 pandemic shut-downs of 2020, and many companies struggle with rising employment costs and the availability of capital, many organizations have turned to staffing firms to help fill positions with quality applicants during a time of uncertainty. Temporary employment will likely continue to grow as many firms change the way they do business. After every U.S. recession since 1991, it has taken progressively longer for jobs to reappear. The United States did not regain the number of jobs it lost in the Great Recession until 2014, according to McKinsey's April 2020 report.² According to a July 2020 McKinsey survey of U.S. executives about the pandemic's



- **Most temporary workers are placed in industrial (36%) and office-clerical (24%) positions, together accounting for 60% of all temporary positions.**
- **The remaining 40% of staffing employees work in higher-skilled occupations.**

long-term impacts, “two years from now, about 70% of the executives in our survey expect to use more temporary workers and contractors onsite at their companies than they did before the crisis.”³ (See Exhibit 3.) The reliance on onsite temporary workers is bound to continue for some time.

The increase of temporary workers and the expected continual growth of this classification of worker have left many employers struggling with how to deal with this new class of worker. Organizations that have never used temporary staffing services in the past or have only had limited experience with the industry are often unaware of their obligations when dealing with staff members that do not technically work for their company.



How does temporary staffing work?

In general, an employer signs a contract with the agency to provide workers for specific tasks for a specified per-hour billing fee. Temporary workers are often under the direct supervision of the host employer and may have only occasional interactions with the staffing firm once they are placed. The temporary workers are technically employed by the staffing firm but in most cases are directly supervised and work right alongside personnel not employed by the staffing company.

Depending on the tasks and the associated costs (payroll, hiring and training, workers compensation costs, employee benefits, etc.), the staffing agency will charge the customer a premium above the base pay of the position. This margin is where staffing agencies make their profit if they can effectively manage costs associated with employment.

The host employer enjoys the advantage of a larger pool of ready-to-work staff and of increasing or decreasing staff (and associated costs) as production or service demands evolve. The staffing industry also assists clients with permanent placement services.

In the past many employers may have seen the staffing industry as only providing day labor (one day only assignments), or for jobs that were “too dangerous or monotonous” for their employees. The operating principles and the employers’ view of the staffing industry has changed significantly in the past several years. Many employers now see the staffing industry as more of a temporary to permanent employment model or as a way for a company to cautiously grow in a recovering economy.

Temporary employment and responsibility for worker safety

OSHA has received and investigated many reports of temporary workers suffering serious or fatal injuries, some in their first days on the job. Numerous studies have shown that new workers are at greatly increased risk for work-related injury, and most temporary workers will be “new” workers multiple times a year. “A worker’s first day at work shouldn’t be his last day on earth,” OSHA says. “Employers are responsible for ensuring the safe conditions of all their employees, including those who are temporary... Host employers need to treat temporary workers as they treat existing employees.

It is incumbent on both employers to communicate with each other when a worker is injured and to determine what measures are to be implemented to prevent future injuries from occurring. Communication between the host employer and staffing agency is of fundamental importance in this regard. For example, if a temporary worker is injured at a host employer worksite, the host employer should inform the staffing agency of the injury, and the staffing agency, in turn, should follow up about preventive actions taken. Similarly, if a staffing agency learns of a temporary worker’s injury (through, for example, the filing of a workers compensation claim), the staffing agency should inform the host employer to help ensure that preventive measures are taken before additional workers are injured.¹⁴

When investigations reveal a temporary worker exposed to a violative condition, and the worker is employed by both a staffing agency and a host employer, OSHA will consider issuing citations to either or both employers, depending on the specific facts of the case.

This may be a change in thinking for many organizations as some have expected and relied on the staffing firm to provide safety training for newly assigned workers. These statements outlined OSHA's expectations for host employers to provide job-specific safety training for all workers, even temporary workers. While the staffing agency may provide basic safety training to their staff (many often do basic safety training as part of their onboarding process), OSHA also expects the host employer to provide job-specific safety training to the temporary employee before they can start work. This expectation includes COVID-19 prevention and control measures to protect temporary workers and all workers at the workplace.

Financial impacts of serious accidents

Both the host employer and the staffing agency can be held financially accountable for serious injuries and fatal accidents to temporary workers. In one case that settled July 30, 2020, the family of a man who died in a 2018 workplace accident during his first assignment working for a temp agency has confidentially settled a workers compensation claim and a negligence lawsuit against the company for whom he was working for a total of \$9.13 million, the family's attorneys report.⁵ The workers comp carrier for the staffing agency paid \$130,000 and the host employer settled the suit against it for \$9 million.

In addition to workers compensation claims and tort settlements, regulatory fines may be issued. A waste management company was cited by OSHA for the death of a 31-year-old temporary employee assigned a new job of loading garbage onto a disposal truck. That employee's death occurred on the third day of this new job. OSHA issued a \$192,000 fine against a different employer for safety violations related to the death of a temporary employee who was killed on his first day on the job.⁶ Because OSHA citations and fines are public information, businesses can suffer reputational harm in addition to the financial penalties.

Know your safety responsibilities for temporary workers

Because a temporary agency employee works under the direction and supervision of the host employment company, the host employer is responsible for providing job-specific training as well as a workplace that is free of recognized hazards. Temporary staffing agencies are responsible for determining conditions at the worksites and ensuring temporary workers are informed of and protected against hazards that they might be exposed to during their work activities.

Investigators and regulators find a lack of health and safety training and communication with workers to be an issue in all temporary worker fatalities investigated.⁷ To help prevent future fatalities and serious injuries, temporary agencies and worksite employers must understand their responsibilities and work together to inform workers about job hazards and provide general and site-specific training. Below is a breakdown of some of these responsibilities:

Temporary Staffing Agencies	Worksite (Host) Employer
Provide general safety information to workers in the language best understood. Keep and maintain records of such training on file.	Provide workplace safety information to workers in the language best understood. For example: <ul style="list-style-type: none"> Safe operating procedures of equipment, including location on emergency stops, and when and how to implement lockout/tagout procedures Safe handling of chemicals to be used Site-specific emergency procedures and instructions on evacuation drills
Arrange with host employers to ensure they provide site-specific safety training.	Receive documentation from the temp agency that general safety training has been completed before start of the work assignment.
Record injuries/illnesses on the OSHA 300 Log for temporary workers who are directly supervised on a day-to-day basis by the temporary agency. (This scenario is uncommon.)	Record injuries/illnesses on the OSHA 300 Log for temporary workers directly supervised on a day-to-day basis by the worksite/host employer. (This scenario is common.)
Provide workers compensation insurance and contact information to all employees.	Encourage temporary workers to participate in safety committees, safety initiatives and accident investigations.
Stay informed about safety conditions and programs at assigned sites.	Provide workers with personal protective equipment (PPE) for site-specific hazards, and train workers on how to properly fit and use PPE.

Recommended safety and health practices

It is a fundamental principle that temporary workers are entitled to the same protections under the OSHA Act as all other covered workers. It is essential the host employer should:

- Have a written safety and health program.
- Define the scope of work expected in the contract for staffing services.
- Perform a hazard assessment of the worksite before the work assignment begins.
- Try to eliminate hazards through engineering efforts.
- Ensure proper PPE is used to help protect the worker, if a hazard cannot be controlled through engineering.
- Conduct new project orientation and safety training to newly assigned temporary employees. Training should address the hazards to which temporary workers may be exposed during the assignment.
- Implement the same precautions for preventing COVID-19 and other infectious diseases for temporary workers as for the overall workforce. Consult OSHA and the Centers for Disease Control (CDC) community guidelines for businesses.

Risk transfer controls

While safety remains a dual responsibility of both the staffing agency and the worksite/host employer, it is in your interest to transfer as much financial risk as possible to the staffing agency. A written contract should be implemented with any staffing agency – evidence of insurance is not enough.

The contract should be clearly worded with the terms of the arrangement that include which party is required to maintain adequate limits of primary and umbrella liability insurance.

- If the staffing agency is to provide primary and umbrella liability insurance, stipulate the requirements for certificates of insurance and appropriate limits; require that your organization be named as an additional insured; and ensure that liability language, such as hold harmless and mutual indemnification clauses, favors your organization
- For workers compensation insurance, require the staffing agency to add an endorsement to the policy known as the “alternate employer” endorsement in favor of your organization. Have your attorney review the written contract and all insurance provisions.

- Consult with your Willis Towers Watson placement broker on appropriately covering all aspects of hiring temporary workers.

Maintaining three-way communication: worker, worksite (host) employer and agency

Temporary work contracts should clearly outline the aspects of safety for which the temporary agency and worksite employer are responsible. This will prevent confusion.

- Designate point persons for both the staffing agency and worksite. Provide their names and phone numbers so that temporary workers may make contact when concerns arise.
- Both the agency and the host employer must communicate responsibilities and expectations to the worker.
- Maintain the agreed upon scope of work and ensure the worker understands the boundaries of the job.

Contacts

If you have questions or would like additional information on safety program development for your temporary workforce and organization, please contact your local Willis Towers Watson Casualty Risk Control Consultant or:

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Sources and links

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⁶<https://www.ehstoday.com/standards/osha/article/21916848/injury-or-death-to-vendors-or-temporary-employees-plenty-of-liability-to-go-around>

⁷<https://www.mass.gov/doc/temporary-agencies-and-worksite-employers-share-responsibility-for-keeping-temporary-workers-0/download>

OSHA Protecting Temporary Workers

Shared Responsibilities in Protecting the Safety and Health of Temporary Workers

Bulletin on OSHA's Injury and Illness Recordkeeping Requirements for Temporary Workers

Bulletin on Temporary Worker Safety and Health Training

OSHA Guidance for Preparing Workplaces for COVID-19

COVID-19 Community Guidance for Business Response from the CDC

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WTW511470/11/2020

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