



Safety Bulletin

Temporary Employees Present a Significant Exposure to Companies

During these difficult economic times, businesses are struggling with workforce staffing adjustments. No business can afford to overstaff during these perilous times. As a result, many organizations are satisfying their staffing needs by engaging temporary employment agencies. Temp agencies have been popular in the health care industry for many years by providing a steady source of qualified healthcare professionals to hospitals and nursing homes to fill in during holidays, vacations and other periods. There has also been an increase in the number of temp employees available to perform office duties, and warehousing and manufacturing functions. Temp agencies can supply both skilled and unskilled labor.

Additionally, many of these agencies can supply workers who are trained in the operation of industrial equipment such as forklifts. The temp agency will, at the client's request, perform drug testing and criminal background screening, and satisfy other employment criteria established by the client. This type of screening is one of the major benefits offered by temp agencies. Further, temp agencies spare the organization recruiting cost and time, and allow the organization to observe the temps' working habits and performance before offering them a full time position.

Despite the temp agency screening and training the candidate, the client company is still responsible for the temporary worker's safety and health as well as compliance with OSHA standards while they are working in the operation. Should the temp employee be injured on the job, the temp agency's workers compensation policy will respond. All of the temp employee's injury costs revert back to their employer, the temp agency. Though there is an argument to be made that keeping these losses and costs off of the client's workers compensation experience rating will allow the organization to remain competitive

with regard to its workers compensation costs, it does come with a significant exposure. Since temporary workers are not employees of the company, the organization loses the protection afforded through the workers compensation legal system. Temporary employees that are injured will collect workers compensation benefits from the temporary agency, and can then seek third party negligence claims against the client's organization.

In a recent incident a 49 year old temporary agency employee hired to stock shelves at an auto parts warehouse sought a third party claim against the client organization. The temporary employee was receiving a pallet of auto parts that was hoisted by a forklift and delivered through a receiving gate on the second floor. The gate was designed to remain in the closed position at all times, except when transferring components from the pallet on the first floor to the second level of the warehouse. As the temporary employee was in the process of retrieving these items, he accidentally fell through the open gate to the concrete floor, approximately 10 feet below. The individual was initially treated by emergency medical technicians, who found him unconscious and bleeding from his nose. He was diagnosed at the hospital with fractures of the skull, clavicle, scapular and numerous broken ribs and remained in the hospital for more than a month. Through the hospital's efforts, and several months of occupational and physical therapy, he made remarkable progress. He steadily regained his baseline health and seemingly made a nearly full recovery. However, within seven months of the accident, a claim was made against the client organization.

An investigation revealed that after years of use, the receiving gate was in disrepair and remained partially open at all times. A plant manager testified that the receiving gate had been in a state of disrepair for years preceding the accident. The action against the company proceeded and both

parties agreed to mediation. A settlement was reached at \$891,716 in August 2009.

In order to reduce this exposure, any organization engaging a temporary agency should execute a formal, signed contract between the parties, with the appropriate indemnifications. Companies cannot transfer their safety and health obligations or their responsibilities for negligence to third parties through a formal contract, but can protect themselves from the often routine, minor workers compensation claims. The contract between the parties should delineate the responsibilities of each and provide the client with the fullest indemnification permitted by law. The temporary agency should be required to perform a safety and health evaluation of the client's location before releasing any workers to that site. A report of their evaluation should be on file with the client. Further, the temporary agency should be required to name the client company as an additional insured on

both their workers compensation and general liability policies. The temporary agency's policy limits and their carrier rating should also be evaluated.

Client companies can and should use temporary agencies in order to meet staffing demands. However, this should only be done with a proper understanding of the full exposure to the organization.

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