

**OREGON OCCUPATIONAL SAFETY AND HEALTH DIVISION
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**

PROGRAM DIRECTIVE

Program Directive A-246
Issued February 28, 2001
Revised December 17, 2015

- SUBJECT** Inspection Criteria: Temporary Service Providers and Leasing Companies
- PURPOSE:** To provide guidance to Oregon OSHA staff when working with temporary service providers and worker leasing companies.
- SCOPE:** This instruction applies to all Oregon OSHA.
- ACTION:** Managers will ensure that all Oregon OSHA staff working with temporary service providers and worker leasing companies are aware of and follow these guidelines when appropriate.
- DEFINITIONS:**
- Administrative Service Organization (ASO) - A company that provides administrative services as they relate to a host employer's responsibilities regarding their employees. ASO services outsource payroll and human resource departments for businesses that use host employer tax identification numbers, which is different from a worker leasing company that uses the worker leasing company's tax identification numbers. **Note:** There is no further discussion about ASOs within the document. ASO is defined here to highlight their existence.
- Host employer - The client of a worker leasing company or a temporary service provider who is using leased or temporary employees.
- Staffing Agencies
- Temporary Service Provider – A staffing provider that provides workers to a client by contract and for a fee, having current written documentation describing the work being provided on a temporary basis (defined below). Temporary service providers are not required to be licensed.
- Worker Leasing Company - A licensed company, commonly known as a professional employer organization (PEO) that provides workers by contract and for a fee to work for a client. It **does not** include a company that provides workers to a client on a temporary basis. (See temporary service provider definition.) Leasing companies must meet the requirements of ORS chapter 656.850(4) compliance with workers' compensation and occupational safety and health laws.

Temporary basis - Workers provided to a client in situations such as employee absences, professional skill shortages, seasonal workloads, special assignments, and projects with the expectation that the positions will be terminated after the situation ends. Workers are also on a temporary basis if they are provided as probationary new hires with a reasonable expectation of transitioning to permanent employment and the client uses a pre-established probationary period in its overall employment selection program.

BACKGROUND: Clarification and standardization of Oregon OSHA policy is needed regarding the expectation and citation of the following:

- Host employers using leased or temporary workers under contract from worker leasing companies or temporary service providers.
- Worker leasing companies and temporary service providers.
- Oregon OSHA, the Workers' Compensation Board and the courts place the greater burden of protection on the party exercising direction and control at the workplace.

POLICY:

- A. Host Employer Responsibilities. In general, the assumption is that the host employer directs and controls the workers. Based on this assumption, citations for safety and health hazards associated with conditions at the workplace that workers are exposed to will normally be issued to the host employer. **Note:** In those cases where the worker leasing companies or temporary service providers have control of the workplace or supervisory direction over the workers (e.g., an on-site supervisor), they have all the responsibilities as the host employer listed below.
1. Hazard Control. The host employer is responsible for controlling and correcting all hazards employees are exposed to at the workplace. They have supervisory direction over the workers and control of the workplace conditions. Normally citations for hazards at the workplace will be issued to the host employer.
 2. Training. The host employer is responsible for site-specific training of all workers at the workplace. This includes, but is not limited to, training on the following:
 - a. Site-specific hazard communication program, including the location of the written program and safety data sheets.
 - b. Control of hazardous energy (lockout/tagout) procedures for equipment and machinery that they work with at the workplace.
 - c. The personal protective equipment (PPE) to be used, worn, and maintained at the workplace.
 3. PPE. The host employer is responsible for conducting a hazard assessment of the workplace and ensuring the use and maintenance of PPE for all workers. They are also required to provide PPE to

leased/temporary workers, unless the contract states the leasing company or temporary service provider will provide it. Neither the host employer nor the worker leasing company or the temporary service provider can require workers to provide or pay for their own PPE to the extent not otherwise allowed. See Program Directive [A-211](#), Personal Protective Equipment.

The worker leasing company or the temporary service provider and the host employer may agree to have the worker leasing company or the temporary service provider supply some or all of the PPE and provide PPE training as long as the host employer ensures that the PPE is appropriate for the worker's assigned tasks. Such an agreement should be detailed in writing; however both employers may still be liable if inadequate PPE and training is not provided to the workers, regardless of which employer agreed to provide the PPE and training.

4. Safety Committee and Safety Meetings.

Host employers who lease or use temporary workers must include them in their employee count when determining the employer's options according to [OAR 437-001-0765](#). If employers choose to hold safety meetings, they must include temporary workers.

Temporary service providers and leasing companies must have their own safety committee or hold safety meetings in compliance with OAR 437-001-0765 for their own staff (other than those who work for a host employer.)

5. Accident Reporting. The host employer is required to report accidents to Oregon OSHA according to [OAR 437-001-0700](#). When Oregon OSHA receives a report from the worker leasing company or the temporary service provider, that notice is acceptable. **Note:** effective January 1, 2016 Oregon's new rule, 437-001-0704 Reporting Fatalities and Injuries to Oregon OSHA, is in effect.

- a. Fatality or catastrophe must be reported to Oregon OSHA within 8 hours of the employer's knowledge of the event.
- b. Accidents requiring hospital admission and treatment must be reported to Oregon OSHA within 24 hours of the employer's knowledge of the event.

6. Recordkeeping. The host employer is responsible for medical record retention and injury and illness record keeping. This includes the OSHA 300 log and 300-A. An OSHA 300 log is required if they had more than 10 employees at any one time during the previous calendar year, unless they are in an exempt industry (see Table 1) according to [OAR 437-001-0700\(3\)\(b\)](#). When counting the number of employees, leased or temporary employees are included. Injuries to them must be recorded on the OSHA 300 Log of the host employer where the injury or illness occurred.

7. Accident Investigation. This is a joint responsibility of the host employer and the leasing company or temporary service provider. All lost time injuries must be investigated to determine how to prevent recurrence. [OAR 437-001-0760\(3\)](#)

B. Worker Leasing Companies and Temporary Service Providers Responsibilities. Staffing agencies also have responsibilities related to rule compliance and employee safety. **Note:** When the worker leasing companies or temporary service providers do not have direction and control, they must assure that the host employer provides adequate training, supervision, and instruction for those workers.

1. Training. Staffing agencies that send employees to host locations need to provide initial awareness training to employees on fall protection, machine guarding, lockout/tagout, hazard communication and other basic requirements of the occupational safety and health standards.
2. PPE. Staffing agencies share responsibilities for their workers' safety and must take reasonable steps to ensure that the host employer conducts the appropriate hazard assessment and provides adequate PPE. The worker leasing company or the temporary service provider should become familiar with the hazards at the host employer's worksite and maintain communication with its workers and the host employer. Such pre-planning and ongoing communication alerts them to persistent or newly-created workplace hazards that may need to be addressed.
3. Recordkeeping. When the worker leasing company or the temporary service provider has direct workers' compensation coverage for the host employer, the worker leasing company or temporary service provider is responsible for completing and filing the DCBS Form 801 for all injuries to leased or temporary workers within seven calendar days after knowledge of an injury.
4. Accident Investigation. This is a joint responsibility of the worker leasing company or the temporary service provider and the host employer. All lost time injuries must be investigated to determine ways to prevent recurrence.
5. Safety Committee and Safety Meetings. Temporary service providers and leasing companies must have their own safety committee or hold safety meetings in compliance with OAR 437-001-0765 for their staff (other than those who work for a host employer.)

C. Worker Leasing Companies and Temporary Service Providers Notices. Oregon OSHA will send a letter (see Appendix A) to the appropriate leasing company or service provider notifying them of a host employer's work site hazards. The letter will contain a copy of the host employer's citation or hazard letter to ensure that they are fully aware of the hazards at the jobsite and that appropriate steps are taken to protect their employees at that jobsite.

Any questions concerning worker leasing companies should be referred to the Worker Leasing Program, within the Workers' Compensation Division.

E-mail: WCD.employerinfo@state.or.us

Phone: 503-947-7815

Toll free: 888-877-5670

Read more about [Worker Leasing vs. Temporary Staffing](#)

RECORDING INFORMATION ON THE OSHA-1 AND OSHA-1 SUPPLEMENT:

If the employer uses temporary or leased employees include the name and address of the staffing company on the OSHA-1 Supplement and in the "Addl Mailing" tab in OTIS.

In order to be able to record and track this information, enter optional information code "S 05 TEMP WORKERS" in OTIS any time you encounter temporary or leased workers exposed to a workplace hazard during an inspection.

Note: For use of this optional information code, temporary or leased workers are those workers who are paid by a temporary service provider or leasing company, whether or not their job is temporary. Temporary workers are those supplied to a host employer and paid by a staffing company.

EFFECTIVE DATE: This directive is effective immediately and will remain in effect until canceled or superseded.

History: Issued 2-28-2001 Revised 12-22-2009, 5-22-2013, 1-7-2014, 1-22-2014, 12-5-2014, 6-2-2015, and 12-17-2015

Appendix A – Sample letter

Date Field

Staffing Agency Employer
Attn: Manager's Name
Address

RE: Oregon OSHA Inspection No. #####

Dear Mr./Ms. Manager,

On [enter date], Oregon OSHA conducted an inspection at [Name of Company], located at [address of inspection]. This inspection was conducted as a result of a [National Emphasis Program, Local Emphasis Program, accident, complaint, etc..., (enter description)]. Oregon OSHA understands that your agency employs temporary workers who perform work for [Name of Company] at this jobsite.

While the extent of responsibility under the law for staffing agencies and host employers is dependent on the specific facts of each case, staffing agencies and host employers are *jointly responsible* for maintaining a safe work environment for temporary workers. Temporary staffing agencies and host employers share control over the worker, and Oregon OSHA may hold both host employer and the staffing agency responsible for violative conditions when appropriate.

Enclosed you will find copies of [citations/hazard letters] issued to [Name of Company]. We are forwarding you these copies to ensure that you are fully aware of the hazards at the jobsite. Please review these documents and ensure that appropriate steps are taken to protect your employees at that jobsite. Please note that Oregon Safe Employment Act, ORS 654.062(5), provides protection for employees against retaliation due to their involvement in protected safety and health related activity.

On April 29, 2003, OSHA launched the Temporary Worker Initiative (TWI) in order to help prevent work-related injuries and illnesses among temporary workers. See OSHA News Release 13-800-NAT, *OSHA launches initiative to protect temporary workers*, April 29, 2013.

A useful resource for information related to temporary workers, including recommended practices, can be found on our website www.orosha.org. See the A-Z topic list, Temporary Employee.

If you have any questions concerning this matter, please do not hesitate to contact this office. We appreciate your support and interest in the safety and health of your employees.

Sincerely,