OSHA’s Temporary Worker Initiative (TWI) was introduced in 2013 to improve safety for temporary workers and clarify the responsibilities for the primary and host employers regarding workplace safety. Considered by OSHA as joint employers, the staffing agency (primary employer) and controlling employer (host employer) each share responsibility to achieve the fundamental principles of a safe work environment for each temporary worker.

Given the broad spectrum of work environments and nature of operations encountered in a joint employer work environment, each employer (primary and host) must demonstrate a thorough initial effort as well as continual communications related to the capabilities and ownership of safety responsibilities.

TWI is not only a useful tool and guide to clarify responsibilities for safety between a primary and host employer, it also creates additional focus by providing an ongoing opportunity for meaningful safety discussions throughout the management systems charged with creating and sustaining a safe work environment. In essence, two management systems must merge into one reliable method to establish and maintain a safe working environment for all employees.

TWI also serves as an important reference guide for topics such as PPE and recordkeeping responsibilities in a joint employer work setting. Without a foundational understanding of safety responsibilities and shared devotion to hazard identification and abatement, gaps in the safety management systems are exploited, which creates a deeper pool of both physical and latent risk. OSHA’s TWI presents both employers the opportunity to meaningfully integrate safety within their business strategies, recognize the mutual benefits for all employees and realize the opportunity for adjacent business benefits across the organization through continual improvements in safety.

Basic Concepts of the OSHA TWI

According to OSHA’s David Michaels:

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 employees safety and health. It is essential that both employers comply with all relevant OSHA requirements.

The following information offers key concepts to consider when determining which employer is in the best position to prevent and correct a hazard and ensure compliance with OSHA’s standards.
The staffing agency often provides general safety and health information regarding a work site, while the host employer is in the best position to provide site-specific training and communications related to both the work environment and job-specific tools and methods to achieve safety. To be clear, both employers have roles in complying with workplace health and safety requirements.

The most successful efforts include the elements of the OSHA TWI as well as a defined and agreed-on set of safety activities that are incorporated into daily operations and periodic reviews of business performance. These active safety tasks (leading indicators), integrated within a safety management system jointly inform management teams and the workforce on the best way to enable and sustain a safe working environment. Without a reliable set of leading indicators, the organization is left to identify drift in safety operations based on injury experience.

Keep in mind that just because a safety strategy has been agreed on, deviation is more likely to occur in an industry known for higher turnover. Therefore, continual assessment and devotion to the state of safety between both employers is necessary.

OSHA compliance officers continue to refine their approach in improving safety in a joint-employer work environment and are honing their efforts to determine whether both employers have met their responsibilities to ensure worker safety. Following are key concepts from OSHA bulletins, with additional insight from the authors.

Communication, Capabilities & Training

Communication between the primary and host employer is the key to ensuring necessary protections are provided.

•Contractual, policy and procedure:
  1) How are the key safety items important to both employers evaluated/audited to ensure ongoing performance?
  2) Are work methods and procedures clear and accountable through the management system (especially in areas of equipment operation)?
•Understanding capabilities:
  1) The host employer is not responsible for workers’ compensation, SUTA/FUTA and certain screening or background requirements.
  2) The primary employer is often not capable of site-specific safety training and reinforcement, nor responsible for day-to-day supervision. According to the OSHA Recordkeeping Handbook, day-to-day supervision generally exists when the employer “supervises not only the output, product, or result to be accomplished by the person’s work, but also the details, means, methods, and processes by which the work objective is accomplished.” Another resource is the letter of interpretation from November 2015.
•Is training adequate to enable safe operation for each employee?

Staffing agencies have a duty to inquire into the conditions of their employee’s assigned workplaces. They must ensure that they are sending workers to a safe workplace.

•Initial risk assessment and alignment with contract/policy/capabilities.
•Clarity and adherence to job description and placement.
•Key point: High-performance safety in a joint-employer setting is best achieved through a reasonable approach to contractual requirements, procurement capabilities connected to operational safety needs and a realistic approach to the limitations of risk transfer.

Beware of the primary employer readily agreeing to assume more risk than it can responsibly and legally manage in order to win business. Also be aware that some employers may removing risk/lowering incident rates by transferring it to another entity. Risk transfer can be a valid approach, but not when it is used to avoid injury to one group by placing it on another.

Create a Baseline for Safety

The statement, “Ignorance of hazards is not an excuse,” applies to both employers. Establishing this upfront removes pretext to the blame game. Both organizations should have enough synergy between them to seek, inquire and observe whether safety operations are reliable and sufficient (e.g., onboarding, training, standardized work instruction, hazard recognition/abatement).

Staffing agencies need not become experts on specific workplace hazards. Instead, they should determine which conditions exist at their client (host) agencies, what hazards may be encountered and how best to ensure protection for the temporary workers.

•American Staffing Association (ASA)/OSHA alliance is developing tools to better equip employers.
•Consideration for capabilities and resources beyond lowest price/next client thinking: Connect necessary contractual safety items to operational safety needs.

The staffing agency has the duty to inquire and verify that the host has fulfilled its responsibilities to maintain a safe workplace. Here are a few key reminders.

•Significant drivers for severity/fatality include temporary workers engaging in activities outside their initial agreed-on job assignment (nonroutine or unauthorized work, deviation from standardized work instructions). Do programmed management connections exist between the primary employer and the host employer to ensure consistency across all shifts?

•Transition from postincident communications to continual pursuit of safety presence and engagement. Apart from incident numbers, how do we know we are creating strength in the safety environment?

•Host employers must treat temporary workers like any other workers in terms of training and safety and health protections. This generates several opportunities:
  1) Further develop labor strategy and expectations. A
staffing provider well-informed of growth, changes and developments to their customers’ future business needs should better manage preventive safety and communications internally.

2) Safety climate/culture and continual improvement discussions. The more a primary employer and a host employer view each other as a lens into the safety climate, culture and workforce operations, the better these employers will achieve a critical path to higher safety performance.

In addition, training, HazCom, SDS and participation in hazard ID/abatement process should be the same for all employees.

American Staffing Association & OSHA

For the past 50 years, ASA has promoted the highest standards of legal, ethical and professional practices as it relates to the staffing industry. ASA also creates a network for educational development and keeping its members informed about important industry issues.

ASA and OSHA have a formal alliance to:
- develop information to clarify the respective safety responsibilities of staffing firms and clients and their roles in improving the safety of temporary workers;
- communicate such information to staffing firms, clients and temporary workers.
- share information among OSHA personnel and industry safety and health professionals regarding temporary worker safety best practices.

ASA has also worked with OSHA to develop guidelines for companies that use temporary workers, and stays current with items related to OSHA’s TWI. Many hazards in the workplace arise from diminished communications, both in the early stages of a business relationship as well as in the midst of change. We believe it is important to view the OSHA TWI as an essential element to be integrated within a customer’s safety management system.

What Should Host Employers Do?

When selecting a staffing firm, host employers should consider the firm’s capabilities to match their need as well as their understanding and devotion to safety. It is also important to understand that traditionally safety-related discussions between a primary and host employer have focused on contractual items, initial orientation/training and onboarding. Once the temporary worker has been through a few initial steps, s/he will be operating in an environment where the safety climate, culture and production pressures (both real and perceived) combine to influence the employee’s work decisions. Add more temporary workers to an unfamiliar fast-paced production environment and the levels of uncertainty increase greatly. Thus, solid communications, consistency in operations and a continual improvement mind-set are needed to manage the inevitability of change.

Initially, a host employer should:
- • Treat temporary workers just like full-time workers.
- • Work with safety-conscious staffing providers.
- • Communicate expectations, safety strategy, policy/procedure and performance goals.
- • Document responsibilities for items in the OSHA TWI
- • Stay educated on OSHA TWI, and engage in broader discussions for continual improvement initiatives.

In addition, ongoing safety development is a sign of maturity in an organization and highlights the interdependent nature between safety and operational performance. OSHA views its TWI much like embracing an effective safety and health management system: as a way to drive down injury and fatality rates. As Dr. Michaels said in his podcast with ASSE President Michael Belcher, “Compliance with OSHA regulations will make your workplace safer, but it won’t make it safe.”

OSHA’s new guidelines for safety management systems consider the changing American workforce and includes an emphasis on safety management systems in a multi-employer work setting. Becoming grounded in the elements of OSHA’s TWI will create pathways toward deeper understanding and quicker acceptance of how to meaningfully incorporate an effective safety management system between a staffing provider and a host employer’s relationship.

References


Scott DeBow, CSP, ARM, is the vice president of safety and development for Employbridge. He has 18 years of progressive safety leadership, capability and practice in general industry, construction and nonprofit organizations. DeBow is newsletter editor for ASSE’s Southwest Chapter and is active on American Staffing Association’s (ASA) Safety Committee and within the OSHA Alliance.

Robert Lewellen is the chief safety officer for EmployBridge. He has 19 years’ OSH experience. He has worked at EmployBridge, the largest industrial staffing company in North America, since June 1999. He is a member of ASA’s Safety Committee and has been working with OSHA on the agency’s temporary Worker Initiative and the alliance between ASA and OSHA.