

TEMPORARY EMPLOYEE SAFETY & HEALTH: Responsibilities of the Temporary Staffing Agency & the Host Employer

THIS GUIDANCE WAS COMPILED BY THE MSU DIVISION OF OCCUPATIONAL & ENVIRONMENTAL MEDICINE. ANY QUESTIONS OR COMMENTS CAN BE DIRECTED TO:

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A 41-year-old temporary staffing agency worker from Michigan fell 15 feet through a section of roof that collapsed. ***He had been on the job for one hour.*** During the previous weeks, roofing company personnel had been on the 50-foot, low-sloped roof performing inspections and doing repair work. The decedent and another worker from the same temporary staffing agency arrived at the site and met the roofing company project leader who was also responsible for safety. The three of them began to tear off the top layer of roofing and insulation. After removing three rows of roofing along the east wall, a skid of roofing material was uploaded to the southeast roof corner. Each crewmember picked up a 90-pound roll of roofing material to carry to the other side of the roof. The roofing company project leader and the decedent's coworker set down their roofing material and turned to return to get more material when they noticed that the

decedent was not with them. As they walked back to the staging area, they looked for him and observed a hole in the roof. The decedent had fallen approximately 15 feet through the collapsed roof opening, landing first on some equipment, and then the concrete floor. Emergency response was notified and the decedent was taken to a local hospital, where he died three weeks later of medical complications from the injuries sustained at the time of the fall.

This document is intended to provide temporary staffing agencies and host employers with an overview of who is responsible for the safety and health of temporary workers. While there is a shared responsibility between the two parties, the primary responsibility for the safety and health of temporary workers lies with the party who creates and controls the hazards of the worksite and exercises day-to-day supervision of the temporary worker, not only including daily work direction, but also the methods, means and processes of how their work is accomplished. Contracts between the Temporary Staffing Agency and the Host Employer should clearly describe the responsibilities of both parties in order to ensure that workers are provided a safe working environment and all requirements of Michigan OSHA's regulations are met, including the provision of training, personal protective equipment, medical surveillance and accident investigation. Sample contract language used by a Michigan construction company is in Appendix A.

Responsibilities of Temporary Staffing Agency & Host Employer WORKPLACE ASSESSMENT

The Michigan Occupational Safety and Health Administration (MIOSHA) consider Temporary Staffing Agencies to be employers whose employees (temporary workers) may be exposed to hazards. Since the Temporary Staffing Agency maintains a continuing relationship with its employees, but another employer (the Host Employer) creates and controls the hazards, there is a shared responsibility for assuring that temporary workers are protected from hazards in the jobs where they are temporarily placed. The Host Employer has the primary responsibility of such protection.

Temporary Staffing Agency Responsibilities	Host Employer Responsibilities
<ul style="list-style-type: none"> • Initially and periodically assess general safety and health at Host Employer locations to ensure that temporary workers are being placed in safe work environments, and are being provided any necessary personal protective equipment. • If an unsafe area is identified during assessment: <ul style="list-style-type: none"> ✓ Ask host employer to correct hazard(s) ✓ Inform Temporary Employee(s) of the hazard(s) ✓ Take reasonable alternative protective measures ✓ Remove its employees from the job if a significant hazard is not promptly corrected • Communicate to Host Employer any Temporary Staffing 	<ul style="list-style-type: none"> • Provide a safe work environment for Temporary Staffing Agency employees. • Identify and mitigate safety and health hazards within the Host Employer site for Temporary Staffing Agency employees. • Promptly abate hazards identified by Temporary Staffing Agency's initial/periodic health and safety assessment. • Abate safety, health, or environmental regulatory citations issued against Host Employer's work sites.

<p>Agency employee safety/health concerns when identified by staffing agency employees working at host site.</p> <ul style="list-style-type: none"> • If possible, participate in on-site investigations for all staffing agency employees with work-related injuries/illnesses. 	<ul style="list-style-type: none"> • Lead injury/illness incident investigations involving Temporary Staffing Agency employees.
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SAFETY & HEALTH TRAINING & PERSONAL PROTECTIVE EQUIPMENT

The general rule is that the Temporary Staffing Agency is expected to provide general training and the Host Employer will provide site-specific training, or training to update employees on new hazards in the workplace.

Under long-standing OSHA policy, the primary responsibility for providing and paying for PPE for temporary workers falls on the entity that directs and controls the workers on the worksite on a daily basis (although this can be contract-dependent). This is typically the Host Employer.

Temporary Staffing Agency Responsibilities	Host Employer Responsibilities
<ul style="list-style-type: none"> • Periodically review the provision of required training as part of the general safety assessments. • Provide basic or "generic" safety training to its employees, including an overview of topics appropriate to the workplace they will be assigned. • Maintain written training records of Temporary Staffing Agency-supplied training. • Establish a reasonable basis for believing that the host employer's site-specific training adequately addresses potential hazards that Temporary Staffing Agency employees may be exposed to at the host worksite. 	<ul style="list-style-type: none"> • Provide all State or Federally mandated compliance training applicable to Host Employer's work environment and processes. • Provide site-specific safety training to temporary workers in the language best understood and in accordance with the governing regulation(s) which may specify the minimum training required for the regulation and the time frame in which it must be delivered. For example: <ul style="list-style-type: none"> ✓ Safe operating procedures of equipment including location of emergency stops, and when and how to implement lockout/tagout procedures ✓ Safe handling of chemicals (HazCom) to be used ✓ Site-specific emergency procedures ✓ Powered industrial vehicles ✓ Personal protective equipment (PPE) • Analyze, determine, and provide at no cost to employee(s) the appropriate PPE for each job description or function and enforce its proper use by Temporary Staffing Agency employees while assigned to their work site.

INJURY/ILLNESS MANAGEMENT & RECORDKEEPING, INCLUDING MIOSHA 300 FORM

When the HOST EMPLOYER provides direct day-to-day supervision by supervising the details, means, methods and processes by which the work is to be accomplished and by specifying the output, product or result to be accomplished by the Temporary Staffing Agency employees' work, the HOST EMPLOYER is required to record the injury on the HOST EMPLOYER's MIOSHA 300 form. The Temporary Staffing Agency is required to provide Workers' Compensation Insurance.

Temporary Staffing Agency Responsibilities	Host Employer Responsibilities
<ul style="list-style-type: none"> • Provide medical management of injuries, the associated injury benefits if applicable, coordination and administration of workers' compensation, and any other issues associated with the employee injury. • Provide detailed injury information which allows Host Employer to complete their MIOSHA 300/301 Forms. 	<ul style="list-style-type: none"> • Immediate notification of injury to Temporary Staffing Agency. • Log/record any work-related recordable Staffing Agency temporary employee injuries/illnesses on the host's MIOSHA 300 Form. • Offer alternative work to restricted Staffing Agency employees as part of a return-to-work program.

MEDICAL TESTING

Medical tests such as hearing or blood lead tests may be required by MIOSHA.

Temporary Staffing Agency Responsibilities	Host Employer Responsibilities
<ul style="list-style-type: none"> Ensure required medical testing and exposure (such as noise or air monitoring) records are maintained in accordance with MIOSHA standards. 	<ul style="list-style-type: none"> Offer and perform the required medical testing. Perform the site characterization and monitoring of exposure to hazardous chemicals on the work site. Perform required medical testing at no cost to the employee or Temporary Staffing Agency.

Appendix A

Sample Contract Language Used by a Michigan Construction Company

Safety Responsibilities

Each of Provider's Associates must complete (host employer) safety orientation training prior to commencing work at the Project. Such training includes, but is not limited to, hazard communication training, site-specific training and personal protective equipment required by the Occupational Safety and Health Administration or any similar state law. Host employer shall pay Provider each Associate's applicable rate for the time required for such training. Provider will cooperate with host employer on any overall safety program for the Project, including, but limited to, prevention and reporting of substance abuse. Provider shall require each of its Associates to cooperate and comply fully with all applicable safety laws, regulations, and ordinances and any safety program that the host employer requires for each Project. Provider shall comply with all requirements of any state or federal Right-To-Know laws. Notwithstanding the foregoing,

host employer is, under no circumstance, providing any indemnification or release to Provider for any and all claims, damages, or penalties, civil or criminal, arising out of or relating to any violations of the Occupational Safety and Health Act of 1970, as amended or any similar state law. Provider shall provide each of its Associates with appropriate clothing, boots, hard hats, and safety glasses. Host employer shall provide any special equipment required for Provider's Associate to perform the tasks host employer assigns. Any of Provider's Associates who fails to comply fully with host employer's safety requirements, who creates or allows unsafe conditions at a Project or who neglects to undertake actively the prevention of accidents or injury with persons or property in or near the premises where work is being performed may be terminated immediately.

Workers' Compensation Insurance Requirement

Provider shall comply with the Insurance Requirements (as defined below). Before Provider deploys any Associates to the Project, certificates of insurance showing the required coverage must be supplied to (host employer)..... Provider shall keep in force, at all times, during performance of the Work, policies of insurance covering all Basic Insurance Requirements (as

defined below) and any applicable Supplemental Insurance Requirements (as defined below)... *The Basic Insurance Requirements include the following:* Workers' Compensation covering Provider's statutory obligations in the State in which the Work will be performed or Federal statutory obligations, if applicable to the Project....