



Standard Interpretations - Table of Contents

• **Standard Number:** 1904; 1904.31; 1904.31(a); 1904.31(b)(2); 1904.31(b)(3); 1904.31(b)(4)

October 19, 2015

Jeff Dahlquist, Jim Evilsizer, Monica Zapp
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Nascote Industries, Inc.
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Dear Mr. Dahlquist, Mr. Evilsizer, and Ms. Zapp:

Thank you for your letter to the Occupational Safety and Health Administration (OSHA) regarding the recordkeeping regulation contained in 29 CFR Part 1904 - Recording and Reporting Occupational Injuries and Illnesses. In an effort to provide the public with prompt and accurate responses, we developed and continue to refine a set of Frequently Asked Questions (FAQ), in addition to maintaining a log of Letters of Interpretation (LOI) on the OSHA Recordkeeping webpage at <http://www.osha.gov/recordkeeping/index.html>.

Your letter requests clarification of OSHA's injury and illness recordkeeping requirements at Section 1904.31, Covered employees. Specifically, you ask OSHA to clarify who is responsible for recording injuries and illnesses of contingent workers when supervision is shared by the host employer and the staffing agency.

OSHA's injury and illness recordkeeping regulation at 29 CFR 1904.31(a) requires employers to record the recordable injuries and illnesses of employees they supervise on a day-to-day basis, even if these workers are not carried on the employer's payroll. Section 1904.31(b)(2) further clarifies that the host employer must record the injuries and illnesses of temporary workers it supervises on a day-to-day basis. Section 1904.31(b)(3) states that if the contractor's employee is under the day-to-day supervision of the contractor, the contractor is responsible for recording the injury or illness. OSHA's FAQ 31-1 at <http://www.osha.gov/recordkeeping/entryfaq.html> clarifies the meaning of day-to-day supervision. Day-to-day supervision occurs when "in addition to specifying the output, product or result to be accomplished by the person's work, the employer supervises the details, means, methods and processes by which the work is to be accomplished."

Scenario

Your company employs contingent workers within your manufacturing environment. The staffing agency is responsible for filling your personnel requests and placement of their employees. The staffing agency has an independent hiring process which includes an orientation and training they conduct prior to placing an employee. The staffing agency is responsible for all personnel matters involving these contingent workers, which includes, but is not limited to, the following: vacation/leave requests, reporting injury/illness, compensation and benefits, corrective action/discipline, and drug screening. You also state in your letter that the staffing agency provides onsite supervision for these employees twenty four hours per day, five days per week.

Your company assigns the daily tasks to the contingent workers.

Response

Your letter specifically states that the staffing agency provides onsite supervision for the contingent workers twenty four hours per day, five days per week. However, based on the information in your letter, there is no evidence that the staffing agency supervises the "details, means, methods, and process by which the work is to be performed." The activities conducted by the staffing agency, such as vacation/leave requests, compensation and benefits, and drug screening, would typically be considered human resource activities, and would not rise to the level of day-to-day supervision. On the other hand, your letter states that your company assigns "daily tasks" to the contingent workers. Assigning daily tasks constitutes supervising the "details, means, methods, and processes" by which these tasks are to be accomplished. Accordingly, your company provides day-to-day supervision for purposes of OSHA recordkeeping.

Please keep in mind that Section 1904.31(b)(4) provides that companies and their subcontractors must coordinate their efforts to ensure that each injury and illness is recorded only once - by the employer who provides day-to-day supervision. As such, there can only be one employer actually providing day-to-day supervision under OSHA's recordkeeping regulation. In other words, for purposes of OSHA recordkeeping, there cannot be joint day-to-day supervision of temporary workers. Also, the determination regarding which entity must record the injuries and illnesses of temporary workers must be based on the actual facts concerning day-to-day supervision at the worksite. This means that the entity that actually provides day-to-day supervision is responsible for recording cases on the OSHA Log regardless of the wording of the parties' contractual arrangements. See, OSHA's June 6, 2012, letter to Belal Kayyali at http://www.osha.gov/pls/oshaweb/owadispl.show_document?p_table=INTERPRETATIONS&p_id=28637.

We hope you find this information helpful. OSHA requirements are set by statute, standards, and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in responses to new information. To keep apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>.

Sincerely,

Amanda Edens, Director
Directorate of Technical Support and Emergency Management

 [Standard Interpretations - Table of Contents](#)

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