



Reply to the attention of:

DEC 29 2008

Ms. Janine M. Legg
HHC Services, Inc.
25 N. Duke St., Suite 100
York, PA 17401

Dear Ms. Legg:

Thank you for your July 11, 2008 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. Your letter states that several clients of your safety and health consulting firm hire temporary labor and have a subcontractor relationship with these temporary agencies. You are requesting clarification of OSHA's position on "leased" or "temporary" employees and who is responsible for recording workplace injuries and illnesses.

Scenario

In your letter, you state that construction company ABC (ABC) hires temporary agency DEF (DEF) as a subcontractor to provide unskilled workers for one specific task at multiple job sites from May to December. Under this arrangement, employees from DEF work alongside employees from ABC. The two companies have entered into a contract that states DEF will provide daily supervision of duties by cell phone, and site visits by a foreman or supervisor on two to three days per week. You state in your letter that the ABC foreman can correct the work of DEF employees only when needed, including specific authority to correct imminent danger conditions created by DEF employees.

Employees from DEF comply with the DEF safety program, which is screened and approved by ABC's Safety Director. DEF employees also receive required OSHA safety training and weekly toolbox talks from their own trainers. Daily safety inspections and checklists are provided separately by DEF employees.

Question 1

What type of documentation must a construction company have in its files to show that a temporary agency is a subcontractor, and therefore responsible for recording workers' compensation injuries of their own employees?

Response 1

OSHA's occupational injury and illness recordkeeping requirements at 29 CFR 1904 differ from those established under various State workers' compensation laws. Differences exist in

the way injuries and illnesses are recorded, as well as the criteria used to determine whether specific cases must be recorded. OSHA does not have the authority to issue interpretations concerning State workers' compensation requirements. We suggest you contact Pennsylvania's Bureau of Workers' Compensation at www.dli.state.pa.us for a response to this question.

Question 2

Is the ABC construction company or DEF temporary agency described in the scenario above responsible for recording occupational injuries and illnesses of DEF employees on their OSHA 300 Log?

Response 2

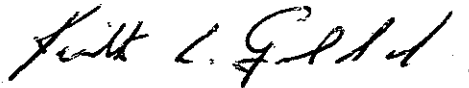
OSHA's injury and illness recordkeeping regulation at 29 CFR 1904.31(a) requires employers to record the recordable injuries and illnesses of employees they supervise on a day-to-day basis, even if these workers are not carried on the employer's payroll. Section 1904.31(b)(2) further clarifies that the host employer must record the injuries and illnesses of temporary workers it supervises on a day-to-day basis. The requirements in Section 1904.31 are based on the consideration that the supervising employer is in the best position to obtain the necessary injury and illness information due to its control over the workplace and its familiarity with the work tasks and the work environment. 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." See, *OSHA's Frequently Asked Question 31-1* at www.osha.gov.

The question of whether ABC or DEF must record injuries and illnesses of the temporary workers depends upon the arrangements the parties make for daily supervision of the manner in which the work is to be performed. The documentation included in your letter did not contain enough specific information to make a proper determination as to which company provides day-to-day supervision to the DEF employees. Accordingly, you should apply the provisions in Section 1904.31, and the concepts described in this letter, to determine which company is providing day-to-day supervision and responsible for recording DEF employee injuries and illnesses.

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. Of course, this coordination should focus on determining which entity provides day-to-day supervision. Also, please keep in mind that determinations regarding which entity must record the injuries and illnesses of temporary workers should 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.

Thank you for your interest in occupational safety and health. 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 response to new information. To keep appraised of such developments, you can consult OSHA's website at <http://www.osha.gov>.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith L. Goddard". The signature is written in a cursive, flowing style.

Keith L. Goddard, Director
Directorate of Evaluation and Analysis