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• **Standard Number:** 1904.31

April 25, 2017

Mr. Fred Hartz  
Holtec International  
200 Braddock Avenue  
Turtle Creek, PA; 15145

Dear Mr. Hartz:

Thank you for your letter to the Occupational Safety and Health Administration (OSHA) regarding 29 CFR Part 1904 - Recording and Reporting Occupational Injuries and Illnesses. Your letter requests clarification of the requirements at Section 1904.31, Covered Employees. Specifically, you ask OSHA to clarify who is responsible for recording injuries and illnesses of workers when supervision is shared by a prime contractor and subcontractor at a construction site.

**Scenario:** In your letter, you state that your company manufactures, constructs, and provides services for spent fuel storage and transportation casks for the nuclear fuel industry. Your company contracts third party labor, operating engineers, electricians, boilermakers, welders, and craft supervisors (boiler maker foreman and general foremen) **under the direction of your project management** (emphasis added). At these worksites, your company is considered the "prime contractor," and the third party labor is considered the "subcontractor." There is also language in the contracts that the subcontractor will provide "seconded labor under the direction and supervision" of your project management team.

**Question:** If we subcontract with a third party to construct, assemble, alter, or repair our casks at a host client's facility, who is responsible for recording work-related injuries and illnesses?

**Response:** OSHA's recordkeeping regulation at Section 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)(3) states that if a contractor's employee is under the day-to-day supervision of the contractor, the contractor is responsible for recording the injury or illness. If another employer (e.g., host employer or prime contractor) supervises the contract employee's work on a day-to-day basis, that employer must record the injury or illness. OSHA's Frequently Asked Question 31-1 at <https://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."

Under OSHA's recordkeeping regulation, the determination regarding which entity must record the injuries and illnesses of contract employees must be based on the actual facts concerning day-to-day supervision at the workplace. 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 agreements. See, OSHA's June 6, 2012, letter to Belal Kayyali at [https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=28637](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=28637) and OSHA's October 19, 2015, letter to Jeff Dahlquist at [https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=INTERPRETATIONS&p\\_id=29951](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=29951)

Your letter states that your company provides direction as the prime contractor, through your project management team, to the subcontractor workers. There is no indication that the subcontractor companies supervise the "details, means, methods and processes by which the work is to be accomplished." Supervision at this level is the determining factor of which company has the responsibility to record injuries and illnesses experienced by employees. It appears, based on the information in your letter, that your company provides day-to-day supervision of the subcontractor workers. If this is true, you must record their recordable injuries and illnesses on your 300 log.

Finally, please be aware that in situations where more than one employer provides supervision, Section 1904.31(b)(4) requires that companies and their subcontractors coordinate their efforts to ensure that each injury and illness is recorded only once – by the employer who provides day-to-day supervision of the injured or ill employee. In other words, for purposes of OSHA recordkeeping, there cannot be joint day-to-day supervision of subcontractors. Accordingly, even though there is language in your contract that the subcontractor will remove the responsibility of day-to-day supervision from their craft supervisors to your management team, and that all the liabilities are the legal responsibility of the subcontractor, there can only be one employer actually providing day-to-day supervision, and only one employer responsible for recording an injury or illness on the 300 log.

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,

UNITED STATES  
DEPARTMENT OF LABOR

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**OCCUPATIONAL SAFETY AND HEALTH**

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