



## U.S. Department of Labor

### Occupational Safety & Health Administration

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#### Standard Interpretations

### 06/23/2003 - Recording criteria for cases involving workers from a temporary help service, employee leasing service, or personnel supply service.

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• **Standard Number:** [1904](#); [1904.31](#); [1904.46](#); [1904.35](#); [1904.40](#); [1904.29](#); [1904.29\(a\)](#); [1904.29\(b\)](#); [1904.29\(b\)\(2\)](#); [1904.33](#)

**This letter constitutes OSHA's interpretation only of the requirements discussed and may not be applicable to any situation not delineated within the original correspondence.**

June 23, 2003

Mr. Edwin G. Foulke, Jr.  
Jackson Lewis LLP  
2100 Landmark Building  
301 North Main Street  
Greenville, SC 29601-2122

Dear Mr. Foulke:

Thank you for your April 3, 2003 facsimile and April 10, 2003 letter to the Occupational Safety and Health Administration (OSHA) regarding the Injury and Illness Recording and Reporting Requirements contained in 29 CFR Part 1904. Specifically, you ask OSHA to clarify the recording criteria for cases involving workers from a temporary help service, employee leasing service, or personnel supply service. Your questions have been outlined below followed by OSHA's response.

**Question 1:** Under 29 CFR Section 1904.31, employers who supervise temporary or leased employees at their facility are required to maintain the OSHA 300 Logs for those employees. With respect to those injuries, can the employer keep a separate 300 Log for the company employees and one log for the temporary or leased employees?

**Response:** The log is to be kept for an establishment. Under Section 1904.46 Definitions, an establishment is a single physical location where business is conducted or where services or industrial operations are performed. The controlling employer (using firm) may sub-divide the OSHA 300 Log to provide separate listings of temporary workers, but must consider the separate listings to be one record for all recordkeeping purposes, including access by government representatives, employees, former employees and employee representatives as required by Section 1904.35 and 1904.40 in the Recordkeeping regulation. OSHA's view is that a given establishment should have one OSHA Log. Injuries and illnesses for all the covered employees at the establishment are then entered into that record to create a single OSHA 300-A Summary form at the end of the year.

**Question 2:** Under 29 CFR Section 1904.31, while the standard clearly indicates the 300

Logs must be maintained for supervised temporary or leased employees, it does not indicate who maintains the 301 documents or the first report of injuries, as well as the medical records on those employees. Also, if a temporary or leased employee has days away from work, it is normally the temporary or leased employee provider's contractual responsibility to handle the medical treatment of the employee. The temporary or leased employee provider is the only person/entity to have the information on days away from work. Who is responsible for maintaining the 301 logs or the first report of injury forms as well as the medical records for these employees, assuming that the employee provider can produce the required documents to the employer for production in the time periods set forth in the standard?

**Response:** Section 1904.29(a) says: "You must use OSHA 300, 300-A and 301 forms, or equivalent forms, for recordable injuries and illnesses." In addition, 1904.29(b)(2) says: "You must complete an OSHA 301 Incident Report form, or an equivalent form, for each recordable injury or illness entered on the OSHA 300 Log." Therefore, when the workers from a temporary help service or leasing firm are under the day-to-day supervision of the controlling party (using firm) the entire OSHA injury and illness recordkeeping responsibility belongs to the using firm.

**Question 3:** Using the facts in Question 2, it is also important to note that an injured temporary or leased employee, who requires days from work, may be replaced by another leased or temporary employee at the work site. From time of the injury, the employer has no information about the return to work status of the injured employee. In fact, the injured employee may be assigned to another employer once he or she is able to return to work. How can the original employer keep accurate 300 Logs when the employee provider has sole access to information on days away from work and return to work status?

**Response:** The controlling employer has the ultimate responsibility for making good-faith recordkeeping determinations regarding an injury and illness to any of those temporary employees they supervise on a day-to-day basis. Although controlling employers ultimately decide if and how a particular case should be recorded, their decision must not be an arbitrary one, but should be made in accordance with the requirements of the Act, regulation, and the instructions on the forms. Therefore, the controlling employer must make reasonable efforts to acquire the necessary information in order to satisfy its Part 1904 recordkeeping requirements. However, if the controlling employer is not able to obtain information from the employer of the leased or temporary employee, the controlling employer should record the injury based on whatever information is available to the controlling employer. The preamble contains a brief reference about OSHA's expectation that the employers share information to produce accurate records, stating that "the two employers have shared responsibilities and may share information when there is a need to do so." (*Federal Register* p. 6041)


Finally, the last question you raised is whether your client or contractor has any requirements under the recordkeeping standard to provide the new contractor the current OSHA 300 Logs for that facility covering those employees who now work for that contractor. Since there was no change of your client's business ownership, he or she needs only to retain the records as per 1904.33 and provide access under 1904.35 and 1904.40.

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 apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>. If you have any further questions, please contact the Division of Recordkeeping Requirements, at 202-693-1702.

Sincerely,

John L. Henshaw  
Assistant Secretary

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