

Protecting Temporary Agency Employees: Information for Employers

What is unique about temporary agency employees?

Employees of temporary agencies, some leasing and staffing agencies, and PEOs (professional employer organizations) have dual employers. A dual-employer arrangement is where an employee has two employers at the same time.

The most common example is when an employee seeks work through a temporary staffing agency. In these situations, the temporary staffing agency sends an employee to work at another employer's worksite. This is a key difference from multi-employer situations, where two or more employers have employees present on one job site, such as a construction site.

The temporary agency who is paying the employee is considered the primary employer. The workplace employer is considered the secondary employer or sometimes referred to as the host employer.



The employee is under the supervision and control of the secondary employer but is on the payroll of the primary employer. The primary employer issues the employee's paycheck, administers workers' compensation insurance, and usually retains hiring and firing authority.

The primary and secondary employer must protect the employees from safety and health hazards and implement safety programs as required by Cal/OSHA regulations. Both employers can be cited for a hazardous condition to which an employee has been exposed.

Primary Employer's Basic Responsibilities

Injury and Illness Prevention Program (IIPP)

Primary employers must establish, implement, and maintain an effective IIPP in writing, as required by title 8 section **3203** of the California Code of Regulations (T8CCR). The IIPP must include:

1. A system for effectively communicating with all of its employees about occupational safety and health.
2. Procedures for initial and periodic inspections to identify and evaluate workplace hazards at the secondary employer's site.
3. Procedures to investigate occupational injuries and illnesses.
4. Procedures for abating hazards to which the primary employer's employees are exposed, or procedures for working with the secondary employer to timely abate the hazards and remove its employees from exposure to unsafe conditions until corrected.

5. Training for new employees, for employees given new assignments, and whenever the primary employer becomes aware of a previously unrecognized hazard. The primary employer must ensure that employees receive proper training. The training must include hazard recognition, exposure prevention, and safe work practices. However, even when the primary employer has provided basic training, the secondary employer must provide site-specific training appropriate to the employees' particular tasks and working conditions. The primary employer must make sure the secondary employer's training adequately addresses all potential hazards.

Personal Protective Equipment

Primary employers must also provide personal protective equipment (PPE) that is appropriate for the employees' job tasks and training on the use of that PPE or ensure that the secondary employer provides the PPE and the training.

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Keep Employees Informed of Hazards in the Workplace

Primary employers must inform its employees that its safety rules apply wherever they are working, and if they are asked to perform a task they believe is dangerous or in violation of the primary employer's safety rules, they may refuse to do it and may return to the primary employer for reassignment without penalty.

Liability for Hazardous Conditions at the Worksite

Primary employers could be cited if they knew or should have known of hazardous conditions and their employees were exposed or injured.

For example, a primary employer was cited for a serious accident-related violation because the employer had not prohibited its employees from working on an unguarded machine, resulting in an employee's finger amputation. The primary employer had found the improperly guarded machine during their inspection. Its on-site supervisor knew of the hazard. The primary employer did not make the secondary employer correct the hazard, train the employees, or reassign the employee to other work.

Workplace Practices for Primary Employers

Below are some common safe work practices that can help primary employers fulfill their responsibility to keep employees safe and healthy at a host employer's worksite:

- Do a site inspection so you are aware of the workplace hazards at the host employer's worksite. Come to an agreement as to who will provide the necessary training and check in with employees to make sure they have received safety training for their job assignments.
- Partner with the host employer to identify workplace areas that pose a risk to employees, ensure appropriate controls are in place to protect employees, and ensure that Cal/OSHA regulations are being followed.
- Stay in touch with the employees and monitor their safety and health on a regular basis. Be involved in accident investigations affecting your

employees to determine what caused the hazard. Be present during investigations and assist host employers in taking corrective action.

- Inform employees that they must be trained on the manufacturer's and host employer's safety instructions before using specific tools and equipment.
- Provide training and education needed by the employees to maintain licenses or certifications required by the host employer.

Secondary Employer's Basic Responsibilities

The secondary (host) employer is fully responsible for the health and safety of the primary employer's employees.

Recordkeeping and Reporting Work-Related Deaths or Injuries

T8CCR section 14300 requires an employer to record work-related fatalities, injuries, and illness of their employees. The primary employer is not required to log injuries and illnesses occurring at the secondary worksite unless it provides supervision on a day-to-day basis. In cases where the secondary employer has full supervisory control over employees, it is responsible for maintaining injury and illness records.

Both primary and secondary employers are required to report work-related death and serious injuries and illnesses to Cal/OSHA. One employer may specifically authorize another to report a death or serious injury or illness to Cal/OSHA, as long as the employer makes the report and explicitly tells Cal/OSHA the report is being made on behalf of both employers.

Protection Against Retaliation

It is illegal for an employer to threaten, fire, demote, or suspend an employee for reporting hazards to an employer, filing a complaint with Cal/OSHA, or participating in a Cal/OSHA investigation or appeal. If an employer retaliates against an employee, the employee has the right to file a complaint with the California Labor Commissioner.

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This document is available with active links at www.dir.ca.gov/dosh/dosh_publications

For assistance regarding this subject matter, employers may contact

Cal/OSHA Consultation Services at 1-800-963-9424 or InfoCons@dir.ca.gov

www.dir.ca.gov/dosh/consultation.html

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