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OSHA's Temporary Worker Initiative Two Years Later

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On April 29, 2013, the Occupational Safety and Health Administration ("OSHA") launched the Temporary Worker Initiative ("TWI") with the purpose of increasing its focus on temporary workers in order to highlight employers' responsibilities to ensure these workers are protected from workplace hazards. A temporary worker is defined by OSHA as one hired and paid by a staffing agency and supplied to a host employer to perform work on a temporary basis. In this situation, OSHA summarily opines that the staffing agency and host employer are "joint employers."¹ Since its inception, there have been at least 24 reported cases (from OSHA press releases) where citations have been issued under the TWI.² After two years of OSHA's enforcement under the initiative, some general observations can be made. Initially, as the charts that follow reveal, host employers are generally issued more citations and larger fines than staffing agencies.

More specifically, one can group these known 24 TWI cases into 5 classifications of possible citations: (1) essentially equal treatment as to the host and staffing agency; (2) both the staffing agency and the host are cited, but the host has substantially more additional citations; (3) both are cited, but the staffing agency has substantially more citations; (4) only the host is cited; and (5) only the staffing agency is cited. Our summary charts for each of these five classifications are detailed below.

1. Host and Staffing Agency Cited Similarly

As the table below demonstrates, it is rare for the host and staffing agency to receive essentially equal treatment. Three of the 24 cases involved the host and staffing agency being cited for essentially the same violations, as follows:

Date of Incident/ Investigation	No. of Host Citations & Proposed Fines	No. of Staffing Agency Citations & Proposed Fines	No. of Identical Citations	Allegations Lodged by OSHA
Jun-13	4 \$20,000	3 \$13,000	2	A temporary worker died from heat stress.
Jul-13	1 \$7,000	1 \$7,000	1	A temporary worker died from excessive heat while cleaning up debris on the deck of the USS Nitze.
Jan-14	20 \$161,100	15 \$114,100	15	An explosion collapsed brick walls, damaged electrical equipment, and injured two permanent plant employees and one temporary employee.

¹ Occupational Safety and Health Administration (U.S. Dep't of Labor), Protecting Temporary Workers, https://www.osha.gov/temp_workers (last visited June 2, 2015).

² 7 citations have been issued to a single employer without mention of a staffing agency; these citations are not included in the subsequent analysis.

2. Both Host and Staffing Agency Cited with Host Cited More Substantially

In other TWI cases, both the host employer and the staffing agency were cited, but the host employer was cited for substantially more violations. There are 13 reported cases of this type listed below. Where multiple but different citation numbers and fines are listed, this reveals that more than one staffing agency was cited.

Date of Incident/ Investigation	No. of Host Citations & Proposed Fines	No. of Staffing Agency Citations & Proposed Fines	No. of Identical Citations	Allegations Lodged by OSHA
Jan-13	12 \$42,000	1 \$7,000	0	Inspection initiated as part of OSHA's National Emphasis Program on Amputations.
Jul-13	14 \$201,000	1 \$6,000	1	Inspection initiated in response to a complaint alleging hazards at the facility.
Sep-13	33 \$185,700	6 \$20,160	4	Inspection initiated in response to a worker complaint.
		12 \$58,500	12	
Dec-13	21 \$171,270	2 \$11,000	0	OSHA initiated the investigation following a referral from the Maplewood Fire Department after a temporary worker was injured after falling from a ladder.
Dec-13	17 \$128,900	1 \$6,300	1	Inspection initiated in response to an unspecified complaint.
Jan-14	7 \$35,410	3 \$9,000	3	A 35-year-old sanitation supervisor at a fish processing plant died on Jan. 16, 2014, after he was caught in the rotating parts of the shucking machine he was cleaning.
May-14	11 \$124,000	4 \$26,000	2	A 24-year-old temporary maintenance employee suffered severe burns from electrical shock while on assignment.
May-14	25 \$109,200	3 \$18,000	2	Inspection initiated in response to an unspecified complaint.
		2 \$12,000	1	
Jun-14	26 \$230,400	1 \$7,000	1	Inspection initiated in response to a worker complaint.
Jul-14	7 \$42,700	3 \$1,020	2	Two temporary workers hired to cut and weld pipes at a plant had no idea and no training to know that the storage tank beneath them contained explosive methane and hydrogen sulfide gases. One of the men was injured and the other died when the tank exploded.
	13 \$139,700	2 \$4,200	0	
Oct-14	14 \$45,000	3 \$8,000	3	Inspection initiated in response to an unspecified complaint.

Date of Incident/ Investigation	No. of Host Citations & Proposed Fines	No. of Staffing Agency Citations & Proposed Fines	No. of Identical Citations	Allegations Lodged by OSHA
Oct-14	13 \$126,020	8 \$32,000	7	Inspection initiated as part of its Regional Emphasis Program for Safety Hazards in the Auto Parts Industry.
Nov-14	9 \$103,800	2 \$10,000	2	Inspection initiated in response to an unspecified complaint.

3. Both the Host and Staffing Agency Cited with the Staffing Agency Cited More

Rarely—only once since the initiative’s beginning—both the host and the staffing agency are cited, but the staffing agency is cited more significantly.

Date of Incident/ Investigation	No. of Host Citations & Proposed Fines	No. of Staffing Agency Citations & Proposed Fines	No. of Identical Citations	Allegations Lodged by OSHA
Aug-14	1 \$7,000	2 \$46,800	1	A day laborer died at a Birmingham work site when the trench around him collapsed.

4. Only the Host Cited

Often enough, just the host is cited. This is more likely when the staffing agency provides no onsite supervision to its employees but occasionally occurs when the staffing agency provides such supervision on site. There are 6 reported cases of this type:

Date of Incident/ Investigation	No. of Host Citations & Proposed Fines	No. of Staffing Agency Citations & Proposed Fines	No. of Identical Citations	Allegations Lodged by OSHA
Jul-13	8 \$303,900	0 \$0	0	A 39-year-old Hispanic temporary worker had entered a concrete mixer’s discharge mud hopper and was crushed.
Oct-13	23 \$106,100	0 \$0	0	Inspection initiated as part of OSHA’s National Emphasis Program on Amputations.
Nov-13	12 \$181,000	0 \$0	0	After a worker’s leg was entangled in an auger in November 2013, OSHA initiated its inspection.
Feb-14	33 \$188,500	0 \$0	0	Inspection initiated in response to a complaint alleging improper storage of material and inadequate forklift training.
		0 \$0	0	
Apr-14	6 \$84,500	0 \$0	0	Inspection initiated in response to an unspecified complaint.

Date of Incident/ Investigation	No. of Host Citations & Proposed Fines	No. of Staffing Agency Citations & Proposed Fines	No. of Identical Citations	Allegations Lodged by OSHA
Jul-14	3 \$84,000	0 \$0	0	A 50-year-old temporary worker was permanently disabled after a machine used to package cases of bottled water onto a pallet for shipment started up while he cleared a jam in the machine.

5. Only the Staffing Agency Cited

Rarely, just the staffing agency is cited. There is one reported case of this type:

Date of Incident/ Investigation	No. of Host Citations & Proposed Fines	No. of Staffing Agency Citations & Proposed Fines	No. of Identical Citations	Allegations Lodged by OSHA
Dec-13	0 \$0	1 each \$6,000 each	0	Temporary worker died from injuries sustained after he was caught in between a conveyor system and crushed while performing sorting operations at a fulfillment center.

The above information is based only on TWI issued citations. At best, the citations reveal patterns regarding what prompts the issuing of citations and do not show how the citations are ultimately resolved through litigation and/or settlement. Accordingly, the outcome of these cases could be vastly different based on discovery conducted, defenses lodged and similar matters. However, these cases show how OSHA is initially assigning responsibility between host employers and staffing agencies when a safety violation is cited. At least at the citation-issuance stage, host employers should be concerned that they often receive more significant citations and fines than their staffing agencies.

For more information, please contact the Haynes and Boone attorney with whom you work or any of the following attorneys in the firm's [OSHA and Workplace Disasters](#) Practice Group:

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