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The Updated Haynes and Boone Survey of OSHA's Temporary Worker Initiative

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The Occupational Safety and Health Administration ("OSHA") continues to issue citations to employers under the Temporary Worker Initiative ("TWI"), and it appears this will remain the case in 2017.

The TWI was created in 2013 to supposedly help OSHA increase 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." Dr. David Michaels, OSHA's outgoing Assistant Secretary of Labor, recently commented that he does not see the upcoming change in administration affecting the TWI. While this remains to be seen, it is clear that OSHA investigators will continue in their present positions and, in turn, will continue to enforce OSHA initiatives. For example, according to Dr. Michaels, the initiative has taken on a life of its own outside of OSHA, with the National Safety Council and American Staffing Association joining forces to certify competent staffing agencies.¹

In 2015, we analyzed 24 TWI citations issued during the first two years of the initiative's existence involving both a host employer and a staffing agency.² Since the time of our last alert and based on data obtained through OSHA press releases, 18 additional citations involving both a host employer and a staffing agency have been issued. Of the 54 total reported cases (from OSHA press releases) where citations were issued under the TWI, 42 involve both a host employer and a staffing agency. In those 42 cases, it has become apparent that while host employers and staffing agencies are often both cited, it is common for host employers to be cited more significantly than the staffing agency.

In a recent example of the trend to cite host employers substantially more than staffing agencies, OSHA cited Sunfield Inc. for 57 violations and assessed a proposed fine of \$3.4 million, while issuing fines of only \$7,000 each to the three staffing agencies who supplied the workers.³ OSHA issued citations to Sunfield for 46 egregious willful, two willful, one repeat, and eight serious safety violations. OSHA alleged that Sunfield, among other things, failed to implement lockout/tagout procedures before maintenance and service and to train workers in how to operate, service, and maintain machine presses safely. OSHA investigated Sunfield after two separate workplace incidents. In the first, OSHA's investigation concluded that a temporary worker who had been on the job less than six months suffered multiple lacerations and a fractured right elbow because lockout/tagout had not been implemented on a machine after a supervisor realized that safety light curtains were not operating properly. In the second, a Sunfield employee's arm had to be surgically amputated above the elbow after his arm was crushed as he removed scrap from a robotic press line. There, OSHA found that there were inadequate guards in place to prevent employees from coming into contact with the machine's parts. The three staffing agencies who supplied temporary workers to Sunfield were each cited for lockout/tagout and mechanical power press safe operation training violations.

¹ See *American Staffing Association and the National Safety Council Launch Safety Standard of Excellence*, AMERICAN STAFFING ASSOCIATION (Oct. 26, 2016) [available here](#).

² Matt Deffebach, Punam Kaji, and Modinat "Abby" Kotun, OSHA Temporary Worker Initiative Two Years Later, [available here](#).

³ *Ohio auto parts manufacturer faces \$3.4M in fines after OSHA finds company willfully exposed temporary workers to machine hazards*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (U.S. DEP'T OF LABOR), OSHA News Releases (June 29, 2016), [available here](#).

The total citations issued since the TWI's creation fall into five categories: (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. Summary charts for each of these five classifications are detailed below.

Analysis of the recent data since our last report reveals that, while host employers and staffing agencies were most often both cited, it is common for host employers to be issued more citations than staffing agencies.⁴ In fact, out of 18 new cases since our last report in which both a host employer and staffing agency were cited, the host employer had substantially more citations and faced much larger monetary penalties in 13 of them. The charts below include the data from our original report along with the data from the 18 new cases.

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

In a majority of TWI cases, both the host employer and the staffing agency were cited, but the host employer was cited for substantially more violations. There are 26 reported cases of this type listed below. Where multiple but different citation numbers and fines are listed, this reveals that more than one host or staffing agency was cited.

Month and Year of Incident/ Investigation	No. of Host Citations & Proposed Fines	No. of Staffing Agency Citations & Proposed Fines	No. of Identical Citations	Inspection Initiation /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.

⁴ Twelve citations have been issued to a single employer without mention of a staffing agency; these citations are not included in the subsequent analysis.

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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.
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.
Dec-14	9 \$140,500	2 \$26,400	0	Inspection initiated in response to a formal complaint. Temporary workers exposed to excessive noise and safety hazards.
		1 \$5,000		
Jan-15	42 \$176,330	3 \$19,800	0	Inspection initiated in response to a worker complaint. Inspectors observed hazards to temporary workers, resulting in a separate inspection of the staffing company.
Jan-15	7 \$362,000	1 \$4,900	0	A temporary worker who had earlier requested fall protection fell 12 feet through a roof.

Apr-15	6 \$130,200	3 \$21,000	2	Inspection initiated at a construction site as part of the National Emphasis Program for Trenching and Excavations after a complaint alleging an employee had been partially buried when an excavation collapsed.
May-15	5 \$65,000	2 \$9,000	2	Citations issued against both host and staffing agency for exposing workers to fall and impalement hazards at construction site.
May-15	9 \$122,500	1 \$38,500	1	Inspection conducted in response to employer's own referral under new injury reporting requirements. Temporary workers had been twice injured by inadequately guarded machines.
May-15	12 \$58,000	1 \$4,000	1	Atlanta window and door manufacturer and staffing agencies cited for exposing nearly 90 workers to fire, amputations and other serious safety hazards.
		1 \$4,000		
Jul-15	8 \$31,000	2 \$12,600	2	Inspection initiated as the result of a complaint.
Sep-15	2 \$37,600	1 \$7,000	0	Inspection initiated after receiving an anonymous telephone tip; workers found working in a trench as deep as 18 feet without cave-in protections.
Jan-16	18 \$58,800	2 \$4,800	2	Investigators began an inspection after receiving several complaints about amputation hazards.
Jan-16	9 \$87,120	3 \$18,900	1	Inspection initiated as part of OSHA's Regional Emphasis Program on Safety Hazards in the Auto Parts Industry.
Feb-16	57 \$3.4M	2 \$7,000	1	Federal investigators inspected an auto parts' manufacturer after two workers suffered severe injuries in separate incidents in January and February 2016.
Mar-16	20 \$654,726	4 \$49,884	2	Acting on a complaint and as part of the agency's Regional Emphasis Program on Safety Hazards in the Auto Parts Industry, OSHA initiated its inspection.

2. Only the Host Cited

Less frequently, 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 nine reported cases of this type:

Month and Year of Incident/ Investigation	No. of Host Citations & Proposed Fines	No. of Staffing Agency Citations & Proposed Fines	No. of Identical Citations	Inspection Initiation /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.
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.
Nov-14	18 \$79,650	0 \$0	0	Inspection initiated in response to a complaint. Both host employer and staffing agencies inspected; only host cited for various safety and health violations.
Jan-15	13 \$116,100	0 \$0	0	Inspection initiated as part of the National Emphasis Program for Chemical Plants.
Mar-15	5 \$119,900	0 \$0	0	Both host employer and staffing agencies inspected. Host cited for various safety and health violations.

3. Host and Staffing Agency Cited Similarly

Less frequently still, the host and staffing agency receive similar treatment. Five of the 42 cases involved the host and staffing agency being cited for essentially the same violations, as follows:

Month and Year of Incident/ Investigation	No. of Host Citations & Proposed Fines	No. of Staffing Agency Citations & Proposed Fines	No. of Identical Citations	Inspection Initiation /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.
Apr-15	2 \$45,500	2 \$14,000	2	Inspection of the meat processing facility initiated after OSHA received a complaint of unsafe working conditions.
May-15	1 \$56,000	1 \$7,000	1	OSHA initiated an inspection after a worker's hand was caught in a machine and amputated.

4. 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.

Month and Year of Incident/ Investigation	No. of Host Citations & Proposed Fines	No. of Staffing Agency Citations & Proposed Fines	No. of Identical Citations	Inspection Initiation /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.

5. Only the Staffing Agency Cited

Also rare is when just the staffing agency is cited. There is one reported case of this type:

Month and Year of Incident/ Investigation	No. of Host Citations & Proposed Fines	No. of Staffing Agency Citations & Proposed Fines	No. of Identical Citations	Inspection Initiation /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.

For more information contact one of the lawyers listed below.

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