

ACCSH Temporary Worker Work Group meeting
December 3, 2014
USDOL Washington, DC

Present: ACCSH members, OSHA staff, public (See attached list.)

Phone in participants: Michel Walker (OSHA), and Mark Carlson, Jim Johnson, Bill Bunn (NACOSH)

Note: Several members of the NACOSH Temporary Worker Work Group participated in this meeting

The meeting was chaired by Tom Marrero; work group co-chairs Jeremy Bethancourt and Tish Davis took notes.

The meeting was largely devoted to a discussion with two construction company representatives (i.e. host employers) regarding their practices and experiences working with temporary agencies and temporary agency workers. Kevin Potter is Vice President of Mortins Buildings, a large commercial construction firm that specializes in pole barn and similar structures. They have with 136 facilities in 38 states. Karl Ballwanz worked with Clark Building Solutions, a large general contractor (GC).

Mr. Potter reported that Mortins Buildings uses temporary agencies in two different ways: 1) to engage workers for project specific needs on bigger projects; and 2) by enlisting temporary agencies to assist in hiring new candidates. They engage workers through the temporary agencies for a 90 day trial period. Mr. Ballwanz reported his experience is on large projects in which project subs need to hire temporary labor to keep the project on schedule. All tiered subs operate under CG policies. Often they have wrap around insurance liability and workers compensation policies (i.e. OCIP's & CCIP's), in which the GC covers comp for all workers on site, including the temporary agency workers. On large projects, temp workers can be there for several months.

Mr. Potter and Mr. Ballwanz responded to a number of questions from ACCSH members and other meeting participants.

When asked what they expect from temporary agency workers in terms of training, Mr. Potter reported that they expect only that the temporary agency worker have the basics of carpentry. Mortins Buildings takes care of the safety training. They have their own internal video production/training group that tailors training to their company. They have a series of six training videos that the temp workers need to watch. There is a test at the end. The foremen on site have responsibility to assure that work is done safely. The first video is an introduction about the company "who they are working for." It covers what company does, worker rights, worker responsibilities, and emergency procedures and sets tone regarding the company's commitment to safety. Their main training focus is on fall protection. Subsequent videos cover ladder safety, fall protection on framing, fall protection on roofing, PPE, and accident reporting. Workers are told to report unsafe

situations to their foremen. The videos are in English but company employees are assigned to help with translation as needed. Many of their foremen are bilingual. Some but not all safety documentation as provided to the employees, is bilingual. Mr. Potter stressed that Mortins Buildings did not want to assume that the temp agency had provided orientation and training. They prefer to do these themselves.

Mr. Potter reported that they also address safety using a weekly planning tool, including a job hazard analysis each day as needed. Every task is assigned a risk and this is reviewed with all workers, including temp workers on site. All workers sign off on the weekly planning tool. He also stressed that it is important that temp workers become part of the team.

Mr. Ballwanz reported that their subs use temporary agencies to engage a range of skilled tradesmen, e.g., electricians, plumbers, steam fitters. The temporary workers need to bring certificates of qualifications for their trade and evidence of training to prove they are qualified. Clark Builders Group relies heavily on the temp agency to provide skilled workers who have had health and safety training, e.g. hazard communication, hazard recognition. They likewise rely heavily on written documentation of training.

Every new employee to job site including temporary agency workers goes through on site safety orientation. This includes information about how to report both injuries and hazards, emergency evacuation... They require that there be an interpreter on job site at all times. Temp workers, like employees, are involved in daily huddles and weekly tool box talks. Weekly tool box talks need to be provided in language that workers understand and be documented. The temporary agency usually provides the PPE and fit testing. Temp agency makes routine visits to site to check on their people and addresses PPE maintenance. In some cases the host employer provides everything.

Mr. Potter reported that Mortins Building provides PPE with the exception of prescription lens goggles for temp workers. Tom Marrero reported that Tradesmen International, a staffing agency, provides basic PPE e.g. goggles, hard hats, but more specific PPE issues laid out in the contract. Both employers reported that respirator use in their business is rare and is treated as a special issue.

If accident occurs, information about injury and accident investigation is shared with the temp agency. Mr. Potter and Mr. Ballwanz both reported that when an incident occurs, they do investigations with all parties involved including the temporary agency. Tom Marrero reported that if the temporary agency cannot go out on the investigation, they will at the very least get the report.

In response to a question about the value of temporary agencies, both Mr. Potter and Mr. Ballwanz reported that the use of temporary agencies/workers is a crucial part of the business.

Health and safety responsibilities are included in the contracts with the temp agencies. It was not clear whether these contractual responsibilities were laid out in the written company health and safety program documentation.

When asked about challenges with temporary workers, Mr. Potter reported that it was their lack of commitment to the company. He also identified the problem that workers hired out of residential construction are not familiar with using fall protection and there needs to be clear communication that fall protection is needed.

Acknowledging the need for shared responsibility and communication, Mary Lynn asked the host employers about the temporary agency involvement after the temporary workers come to the sites. Mr. Ballwanz reported that they usually see the temporary agency staff on site at least once a week to monitor their employees. Mr. Potter reported that they work on over 6000 sites per year and is hard to get temporary agency on all sites since their crews travel throughout the country and mentioned that at times it is difficult for them to coordinate jobsite visits.

Scott Schneider suggested that it would be useful to have a model template for what should be included in the initial health and safety orientation that would focus on policies and company philosophy about safety rather than hazard specific training.

Both employers acknowledged that temp workers are treated differently on the job site and that it can be challenging to integrate them into the team, as it is with all new employees. There are challenges for both the full time and the temp workers.

In response to a question about OSHA 10 cards, Mr. Potter reported that they ideally want all their workers to have OSHA 10 cards. It is challenging to keep this up. They have internal trainers and their regional managers all have OSHA 30 training. Mr. Ballwanz reported that they offer OSHA 10 free of charge; the drawback is that the temporary employer has to pay for the time, which they often do. Mortins Buildings pays workers to take the OSHA 10. There was further discussion about how OSHA 10 is important but only covers the basics and is not enough.

When asked about hazard reporting, Mr. Potter reported that temp workers were more likely to report than permanent workers. One reason is that because of working for a different employer, they are not likely to jeopardize bonuses. Other reasons given were recent training on hazard reporting and lack of familiarity with hazards and Standard Operating Procedures.

After this discussion, the work group addressed several additional issues and next steps. Eric Kampert read the request from Dr. Michaels that the work group provide recommendations to OSHA on what additions need to be made to OSHA's guidance on injury and illness prevention programs, found on OSHA I2P2 web site, on protecting temporary workers or subcontractors. (See attached.)

Peg Seminario suggested that the Work Group develop specific language to include in OSHA's guidance on the injury and illness prevention programs. This would be a concrete task for the group to take on. NACOSH has also been asked to work on this and the two temporary worker Work Groups could collaborate through emails and conference calls before the next meeting. It was suggested that this be raised as a recommendation at the ACCSH meeting. It was also suggested that we start by reviewing the section on contract workers in the ANSI Z 10 standard as an example of incorporating language on temporary workers in health and safety program guidance.

Tish Davis raised the need for better data on temporary workers. Ideally record-keeping rules could be changed to include additional information on employment status of injured workers and clarify what denominator should be used in generating annual recordable injury rates. It was suggested that OSHA's new record-keeping rule requiring reporting of hospitalizations and amputations would be a good opportunity to pilot collecting data on employment status of injured workers. This could be collected both in online reporting and phone reporting. The need to include BLS in discussions about how to improve data on temporary workers, subcontracted workers and other work arrangements was also raised.

Peg Seminario also reiterated the need for shorter translated versions of temporary agency materials geared for workers rather than employers. Mary Lynn reported that OSHA is working on a piece for workers. She also indicated that OSHA is interested in suggestions regarding ways to get information about record-keeping requirements out to temporary agencies and host employers.

Jeremy Bethancourt underscored the need to broaden the temporary worker initiative to address other misclassified workers on construction sites. For example piece workers and phase workers on a site where they do only one portion of a job and then leave. They are not independent contractors nor are they employees of a temporary employment agency. They are actually hired as employees by the contractor but treated as though they are an independent contractor... an issue for wage and hour, OSHA, and workers compensation. OSHA does have a role in this issue.

The need to involve USDOL wage and hour division in the temporary worker workgroup was also raised because of the misclassification of workers who are in reality a temporary worker of a contractor in that the work duration is temporary. Where contractors misclassify may very well be an issue for wage and hour but it is OSHA who should be working to ensure there is safety training provided to those same workers.

It was suggested by Peg Seminario that this issue could be an opportunity for OSHA and Wage & Hour to work on together.

ACCSH members and others present extended their thanks to Mr. Potter and Mr. Ballwanz for their willingness to participate in the meeting and the information that they provided.