



# Temporary Worker Initiative

## Respiratory Protection

This is part of a series of guidance documents developed under the Occupational Safety and Health Administration's (OSHA's) Temporary Worker Initiative (TWI). This Initiative focuses on compliance with safety and health requirements when **temporary workers** are employed under the joint employment of a **staffing agency** and a **host employer**.

Temporary workers are entitled to the same protections under the *Occupational Safety and Health Act of 1970* (the OSH Act) as all other covered workers. When a staffing agency supplies temporary workers to a business, typically, the staffing agency and the staffing agency's client, commonly referred to as the **host employer**, are joint employers of those workers. Both employers are responsible for determining the conditions of employment and complying with the law. In these joint employment situations, questions regarding how each employer can fulfill its duty to comply with the standard are common. This bulletin addresses what both the staffing agency and the host employer can do to ensure that temporary workers who are exposed to airborne contaminants are appropriately protected in accordance with OSHA standards [29 CFR 1910.134](#) for general industry; [1926.103](#) for construction; and [1915.154](#), [1917.92](#), and [1918.102](#), for maritime — *Respiratory Protection* (the standard).

Respirators protect workers against insufficient oxygen environments and harmful air contaminants in dusts, fogs, fumes, smokes, mists, gases, vapors, and sprays. Exposure to hazardous air contaminants could cause cancer, other serious diseases, and death. The primary goal of preventing employee exposures to hazardous air contaminants is to reduce the incidence of work-related diseases and death.

OSHA requires exposures to hazardous substances to be controlled to the extent feasible by following a hierarchy of controls, first either substituting out the harmful substance for less toxic materials or controlling exposures through engineering controls (for example, enclosure or confinement of the operation and general and local exhaust ventilation). Administrative and work practice controls such as hygiene practices and rotating work schedules are considered a secondary means of control. When all feasible engineering and administrative controls are in place but employee exposures to airborne substances remain above established exposure limits, while such controls are being implemented, and in some emergency situations, OSHA requires that appropriate respirators be used pursuant to the standard.

According to the standard, employers are required to identify and evaluate potential respiratory hazard(s) in the workplace. This evaluation must reasonably estimate respiratory hazards to which workers may be exposed at the worksite in addition to selecting and providing appropriate respirators when required. Where conditions require respirators, the employer must develop and implement a respiratory protection program in accordance with the standard that includes but is not limited to:

- A written respiratory protection program that includes worksite-specific procedures and elements for respirator use;

- Selection of the correct type of respirator based on the respiratory hazards to which the worker is exposed and other workplace and user factors. Depending on the hazard (s) present in the workplace, different types of respirators may be appropriate, such as disposable (e.g., filtering face piece), reusable (e.g., half mask and full face elastomeric), powered air-purifying (PAPR), self-contained breathing apparatus (SCBA), or supplied air respirators (SARs);
- Medical evaluations;
- Respirator fit-testing;
- Proper use of respirators in routine and reasonably foreseeable emergency situations;
- Maintenance and care of respirators;
- Adequate air quality, quantity, and flow of breathing air for atmosphere-supplying respirators;
- Training of employees required to wear respirators;
- Recordkeeping of the medical evaluation, fit-testing, training and written respirator program; and
- Evaluation of the program.
- Employers (both host and staffing agency) that allow voluntary use of respirators must ensure the employee is medically able to use the respirator and that the respirator does not present a health hazard, and provide the employee a copy of Appendix D from the Respiratory Protection standard. Coordination between joint employers is essential for this provision.

Both the host employer and staffing agency are jointly responsible to ensure workers wear appropriate respirators when required. While both the host and the staffing agency are responsible to ensure that the employee is properly protected in accordance with the standard, the employers may decide that a division of the responsibility may be appropriate. Neither the host nor the staffing agency can require workers to provide or pay for their own respiratory protection when it is required.

## Host Employer Responsibilities

The host employer will usually have the primary responsibility for evaluating exposure levels, implementing and maintaining engineering, administrative, and work practice controls,

providing an appropriate respirator, and maintaining a respiratory protection program in accordance with all requirements of the standard for the workplace because:

- The host employer is typically most familiar with the chemicals present in the workplace and has control over the processes and equipment that may produce respiratory hazards to which the temporary workers may be exposed.
- The host employer is generally in the best position to implement a respiratory protection program and these provisions will likely be in place for permanent staff.
- The host employer can maintain the appropriate surveillance required of work area conditions and the degree of employee exposure.
- The host employer is usually in the best position to reevaluate respirator use when changes occur in work area conditions including production or process modifications that affect levels of employee exposure and physical stress that may affect respirator effectiveness. The host employer should communicate any changes to the respiratory protection program to the temporary employees and staffing agency.

## Staffing Agency Responsibilities

The **staffing agency** shares responsibility for its workers' safety and health and has an obligation to take reasonable steps to ensure that its employees are protected from workplace hazards as required by OSHA standards, including being aware of the respiratory hazards to which their employees may be exposed at the host's worksite, the protective measures the host employer has implemented, and any requirements for respiratory protection at the host employer's worksite.

The staffing agency is also responsible for maintaining communication with its workers and the host employer. Such ongoing communication also alerts the staffing agency to additional or newly created workplace hazards that may need to be addressed and ensure that responsibilities of the respiratory protection program are understood and implemented.

## Records Retention

Employers must retain records of the physician's or other licensed healthcare professional's (PLHCP's) written recommendation [See [1910.134\(e\)\(6\)\(i\)](#)], fit-testing, training, and written respiratory protection program. Provisions for the maintenance of written records should be established prior to beginning work.

- The medical evaluation questionnaires and any examination test results required by the standard [See [1910.134\(e\)\(2\)-\(4\)](#)] are considered medical records under OSHA standards [29 CFR 1910.1020](#), [1926.33](#) and [1915.1020](#) *Access to employee exposure and medical records* [See [29 CFR 1910.1020\(c\)\(6\)\(i\)\(A\)](#)], and must be treated as such. Therefore, joint employers must agree

to who will retain these medical records prior to beginning work. Typically, the options are:

- The medical records are retained by the employer (either staffing agency or host) who provides the medical evaluation in the employees' confidential file,
- The PLHCP who conducted the medical evaluation retains the employee medical records on behalf of the employer, or
- The employer's (either staffing agency or host) medical office retains employee medical records if the medical office is administratively separate from the employer's central administration offices. [See Section IX.E of OSHA's Respiratory Protection Directive, [CPL 02-00-158](#) (June 26, 2014).]

### Example Scenario\*\*

A hypothetical metal equipment manufacturer, Iron Alloy Co. (IAC), needs welders for a short-term increase in production. IAC contracts with Temp Staffing to provide workers on a temporary basis. Temp Staffing hires ten workers and sends them to work at IAC.

When the welding is performed, fumes drift up into the breathing zone of the workers. There is no mention of a respiratory protection program in IAC's contract with Temp Staffing and no respirators are provided to the workers. A week later, a temporary worker mentions to a Temp Staffing representative that the air is contaminated during welding and that respiratory protection has not been provided. When Temp Staffing discusses this with IAC, IAC refuses to supply the respirators or discuss any evaluation of respiratory hazards.

### Analysis

Since a potential air contaminant overexposure hazard exists, identification and evaluation of the exposure to welding fumes in the workplace are required. This evaluation must include a reasonable estimate of employee exposures to welding fumes, and, if required, respirators must be provided along with the implementation and administration of all elements of a respiratory protection program. Since IAC controls the worksite, it is in the best position to control overexposures through engineering or administrative controls. IAC is also best positioned to select, provide, and maintain adequate respiratory protection if required. IAC may be subject to OSHA citations for failure to evaluate air contaminant exposures and provide necessary controls and respirators.

Temp Staffing is also required to ensure that its employees' potential overexposure to air contaminants is assessed before they are placed in the potentially hazardous environment. Temp Staffing could fulfill this duty by verifying that IAC has instituted an adequate respiratory protection program that complies with the standard, including, but not limited to: evaluation

of the respiratory hazards; providing respirators, maintenance and storing of respirators if required; medical evaluation; fit-testing; and training. Temp Staffing may be subject to OSHA citations for failing to take reasonable steps to ensure that its employees were protected as required by the standard.

However, Temp Staffing did discover IAC's lapse in worker protection reasonably quickly and, upon discovery, addressed the issue with IAC. If IAC continues to refuse to implement a complete respiratory protection program, Temp Staffing has the choice of implementing the missing elements of the program (if possible) or withdrawing its workers from the site. If Temp Staffing does neither, again, it may be subject to OSHA citations.

In addition, should OSHA discover the workers welding without respiratory protection and that the permissible exposure limits were exceeded, both employers may be subject to OSHA citations for exposing employees above the permissible exposure limit.

*\* The company names used in this scenario are fictitious. Any resemblance to real companies is entirely coincidental.*

*† This scenario would also apply to the construction and maritime industries.*

The OSHA standard, *Access to employee exposure and medical records*, does not permit the disclosure of an employee's medical record by the employer, unless the individual requesting access is the employee, his or her designated representative, or OSHA under a medical access order. The medical records of employees who have worked for less than one year for the employer need not be retained beyond the term of employment if they are provided to the employee upon the termination of employment.

If a medically qualified temporary worker works at multiple host employer sites, the host employers may obtain a copy of the PLHCP's written recommendation from the PLHCP of another host, the staffing agency, or from the individual employee. An existing written recommendation of the employee's ability to use a respirator, as determined by the employee's previous host employer's or staffing agency's PLCHP, may be accepted only if the work conditions and type of the respirator remains the same, it is appropriate for use at the new worksite (based on the questionnaire), and meets the requirements of the standard at [29 CFR 1910.134\(e\)\(1\)](#). In general, the written recommendation should be provided by

the PLHCP, but it can be provided by the employee to the employer. The current host employer must also exercise due diligence to ensure the above conditions are met when receiving a PLHCP's written recommendation from another host employer.<sup>1</sup>

As a recommended practice, the staffing agency and host employer should establish which party is responsible for each aspect of a respiratory protection program prior to work beginning. The details of the protections to be provided can be clearly established in the language of the contract between the employers. However, neither employer may avoid its ultimate responsibilities under the OSH Act by requiring another party to perform them.

## State Plans

Twenty-eight states and U.S. territories operate their own OSHA-approved occupational safety and health programs, called State Plans. These State Plans have and enforce their own occupational safety and health standards that

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1. See also Mitch Merkel letter of interpretation; December 4, 2014; at [www.osha.gov/laws-regs/standardinterpretations/2014-12-04](http://www.osha.gov/laws-regs/standardinterpretations/2014-12-04)

must be at least as effective as OSHA's, but may have different or additional requirements. A list of the State Plans and more information are available at: [www.osha.gov/dcsp/osp](http://www.osha.gov/dcsp/osp).

## How Can OSHA Help?

Workers have a right to a safe workplace. If you think your job is unsafe or you have questions, contact OSHA at 1-800-321-OSHA (6742) or visit OSHA's main web page at [www.osha.gov](http://www.osha.gov). It's confidential. We can help.

For other valuable worker protection information, such as Workers' Rights, Employer Responsibilities and other services OSHA offers, visit OSHA's Workers' page [www.osha.gov/workers](http://www.osha.gov/workers).

For information on Temporary Workers visit OSHA's Temporary Workers' page [www.osha.gov/temp\\_workers](http://www.osha.gov/temp_workers).

For more information on hearing conservation visit [www.osha.gov/Publications/OSHA3074/osha3074.html](http://www.osha.gov/Publications/OSHA3074/osha3074.html). For a pocket guide on noise in construction, visit [www.osha.gov/Publications/3498noise-in-construction-pocket-guide.pdf](http://www.osha.gov/Publications/3498noise-in-construction-pocket-guide.pdf).

The OSH Act prohibits employers from retaliating against their employees for exercising their rights under the OSH Act. These rights include raising a workplace health and safety concern with either employer, reporting an injury or illness, filing an OSHA complaint, and participating in an inspection or talking to an inspector. If workers have been retaliated or discriminated against for exercising their rights, they must file a complaint with OSHA within 30 days of the alleged adverse action to preserve their rights under section 11(c). For more information, please visit [www.whistleblowers.gov](http://www.whistleblowers.gov).

OSHA also provides help to employers. OSHA's On-Site Consultation Program offers free and confidential advice to small and medium-sized businesses in all states and several territories, with priority given to high-hazard worksites. On-Site consultation services are separate from enforcement and do not result in penalties or citations. Consultants from state agencies or universities work with employers to identify workplace hazards, provide advice on compliance with OSHA standards, and assist in establishing and improving safety and health management systems. To locate the OSHA On-Site Consultation Program nearest you, call 1-800-321-6742 (OSHA) or visit [www.osha.gov/consultation](http://www.osha.gov/consultation).

**Disclaimer:** This bulletin is not a standard or regulation, and it creates no new legal obligations. It contains recommendations as well as descriptions of mandatory safety and health standards. The recommendations are advisory in nature, informational in content, and are intended to assist employers in providing a safe and healthful workplace. The *Occupational Safety and Health Act* requires employers to comply with safety and health standards and regulations promulgated by OSHA or by a state with an OSHA-approved state plan. In addition, the *OSH Act's General Duty Clause, Section 5(a)(1)*, requires employers to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm.



U.S. Department of Labor

