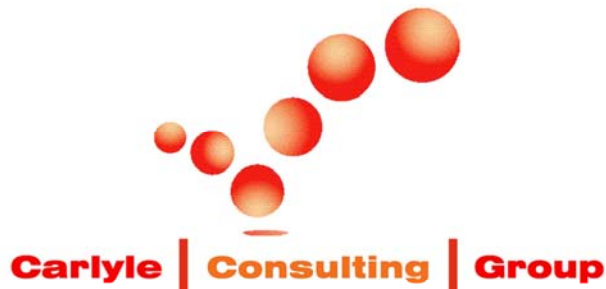


OSHA's Letter of Interpretation

Understanding Your Recordkeeping Responsibilities With Leased and Temporary Employees



Presented By
The Carlyle Consulting Group
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Understanding OSHA Regulations & Interpretations

Featured Letter of Interpretation: Temporary and Leased Employees

This month we discuss a very common question regarding the use of temporary or leased personnel. There has always been confusion as to who's responsibility it is to record the injuries and illnesses of these contractors. Often times, the contractor's employer will reason that since the injury occurred at your jobsite, then it's your responsibility to record the injury on your recordkeeping form.

You might reason however, that since this person is not your employee, the injury must be recorded on the contractor's recordkeeping logs. Who would be right in a case such as this?

OSHA answers that question for us in this month's featured letter of interpretation from June 23, 2003.

Note the following key points:

- The log is to be kept for an establishment. Under Section 1904.46 Definitions, an establishment is a single physical location where business is conducted or where services or industrial operations are performed. (Line 25 – 27)

- "You must complete an OSHA 301 Incident Report form, or an equivalent form, for each recordable injury or illness entered on the OSHA 300 Log." Therefore, when the workers from a temporary help service or leasing firm are under the day-to-day supervision of the controlling party (using firm) the entire OSHA injury and illness recordkeeping responsibility belongs to the using firm. (Line 53 – 58)

- The controlling employer has the ultimate responsibility for making good-faith recordkeeping determinations regarding an injury and illness to any of those temporary employees they supervise on a day-to-day basis. (Line 69 – 71)

The following letter of interpretation was taken from the OSHA website. No text has been added or deleted; however we have added line numbers on the left side of the text and we have highlighted certain text sections in yellow for clarification purposes.

* * * * *

1 June 23, 2003

2

3 Mr. Edwin G. Foulke, Jr.
4 Jackson Lewis LLP
5 2100 Landmark Building
6 301 North Main Street
7 Greenville, SC 29601-2122

8

9 Dear Mr. Foulke:

10

11 Thank you for your April 3, 2003 facsimile and April 10, 2003 letter to the
12 Occupational Safety and Health Administration (OSHA) regarding the Injury and
13 Illness Recording and Reporting Requirements contained in 29 CFR Part 1904.
14 Specifically, you ask OSHA to clarify the recording criteria for cases involving
15 workers from a temporary help service, employee leasing service, or personnel
16 supply service. Your questions have been outlined below followed by OSHA's
17 response.

18

19 **Question 1:** Under 29 CFR Section 1904.31, employers who supervise
20 temporary or leased employees at their facility are required to maintain the
21 OSHA 300 Logs for those employees. With respect to those injuries, can the
22 employer keep a separate 300 Log for the company employees and one log for
23 the temporary or leased employees?

24

25 **Response:** The log is to be kept for an establishment. Under Section 1904.46
26 Definitions, an establishment is a single physical location where business is
27 conducted or where services or industrial operations are performed. The
28 controlling employer (using firm) may sub-divide the OSHA 300 Log to provide
29 separate listings of temporary workers, but must consider the separate listings to
30 be one record for all recordkeeping purposes, including access by government
31 representatives, employees, former employees and employee representatives as
32 required by Section 1904.35 and 1904.40 in the Recordkeeping regulation.
33 OSHA's view is that a given establishment should have one OSHA Log. Injuries
34 and illnesses for all the covered employees at the establishment are then entered
35 into that record to create a single OSHA 300-A Summary form at the end of the
36 year.

37

38 **Question 2:** Under 29 CFR Section 1904.31, while the standard clearly indicates
39 the 300 Logs must be maintained for supervised temporary or leased employees,
40 it does not indicate who maintains the 301 documents or the first report of
41 injuries, as well as the medical records on those employees. Also, if a temporary
42 or leased employee has days away from work, it is normally the temporary or
43 leased employee provider's contractual responsibility to handle the medical
44 treatment of the employee. The temporary or leased employee provider is the

45 only person/entity to have the information on days away from work. Who is
46 responsible for maintaining the 301 logs or the first report of injury forms as well
47 as the medical records for these employees, assuming that the employee
48 provider can produce the required documents to the employer for production in
49 the time periods set forth in the standard?

50
51 **Response:** Section 1904.29(a) says: "You must use OSHA 300, 300-A and 301
52 forms, or equivalent forms, for recordable injuries and illnesses." In addition,
53 1904.29(b)(2) says: "You must complete an OSHA 301 Incident Report form, or
54 an equivalent form, for each recordable injury or illness entered on the OSHA
55 300 Log." Therefore, when the workers from a temporary help service or leasing
56 firm are under the day-to-day supervision of the controlling party (using firm)
57 the entire OSHA injury and illness recordkeeping responsibility belongs to the
58 using firm.

59
60 **Question 3:** Using the facts in Question 2, it is also important to note that an
61 injured temporary or leased employee, who requires days from work, may be
62 replaced by another leased or temporary employee at the work site. From time
63 of the injury, the employer has no information about the return to work status of
64 the injured employee. In fact, the injured employee may be assigned to another
65 employer once he or she is able to return to work. How can the original employer
66 keep accurate 300 Logs when the employee provider has sole access to
67 information on days away from work and return to work status?

68
69 **Response:** The controlling employer has the ultimate responsibility for making
70 good-faith recordkeeping determinations regarding an injury and illness to any of
71 those temporary employees they supervise on a day-to-day basis. Although
72 controlling employers ultimately decide if and how a particular case should be
73 recorded, their decision must not be an arbitrary one, but should be made in
74 accordance with the requirements of the Act, regulation, and the instructions on
75 the forms. Therefore, the controlling employer must make reasonable efforts to
76 acquire the necessary information in order to satisfy its Part 1904 recordkeeping
77 requirements. However, if the controlling employer is not able to obtain
78 information from the employer of the leased or temporary employee, the
79 controlling employer should record the injury based on whatever information is
80 available to the controlling employer. The preamble contains a brief reference
81 about OSHA's expectation that the employers share information to produce
82 accurate records, stating that "the two employers have shared responsibilities
83 and may share information when there is a need to do so." (*Federal Register* p.
84 6041)

85
86 Finally, the last question you raised is whether your client or contractor has any
87 requirements under the recordkeeping standard to provide the new contractor
88 the current OSHA 300 Logs for that facility covering those employees who now

89 work for that contractor. Since there was no change of your client's business
90 ownership, he or she needs only to retain the records as per 1904.33 and
91 provide access under 1904.35 and 1904.40.

92
93 Thank you for your interest in occupational safety and health. We hope you find
94 this information helpful. OSHA requirements are set by statute, standards, and
95 regulations. Our interpretation letters explain these requirements and how they
96 apply to particular circumstances, but they cannot create additional employer
97 obligations. This letter constitutes OSHA's interpretation of the requirements
98 discussed. Note that our enforcement guidance may be affected by changes to
99 OSHA rules. Also, from time to time we update our guidance in response to new
100 information. To keep appraised of such developments, you can consult OSHA's
101 website at <http://www.osha.gov>. If you have any further questions, please
102 contact the Division of Recordkeeping Requirements, at 202-693-1702.

103
104 Sincerely,

105
106
107
108 John L. Henshaw
109 Assistant Secretary



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The information contained within this report is intended to provide basic, non-exhaustive information on OSHA Recordkeeping issues. Because many factors play a role in successful OSHA compliance, The Carlyle Consulting Group assumes no legal responsibility for the information contained within this document.