FILED
SUPREME COURT
STATE OF WASHINGTON
9/16/2020 3:28 PM
BY SUSAN L. CARLSON
CLERK

Supreme Court No. 99032-8
(Court of Appeals No. 79717-4-I)

**SUPREME COURT
STATE OF WASHINGTON**

DEPARTMENT OF LABOR & INDUSTRIES OF THE STATE OF WASHINGTON,

Petitioner,

v.

LABORWORKS INTERNATIONAL STAFFING SPECIALISTS, LLC,

Respondent.

PETITION FOR DISCRETIONARY REVIEW

ROBERT W. FERGUSON
Attorney General

Anastasia Sandstrom
Senior Counsel
WSBA No. 24163
Office Id. No. 91018
800 Fifth Ave., Ste. 2000
Seattle, WA 98104
(206) 464-6993

TABLE OF CONTENTS

I. INTRODUCTION 1

II. IDENTITY OF PETITIONER AND DECISION 3

III. ISSUE PRESENTED FOR REVIEW 3

IV. STATEMENT OF THE CASE 3

- A. Temporary Workers Are a Vulnerable Population 3
- B. Laborworks Entered Into a Daily Assignment Contract with Strategic Materials, a Recycling Facility That Processes Waste—Including Glass and Used Needles 6
- C. Laborworks Employees Had Poking Incidents with Sharp Objects, Which Required Following Blood-Borne Pathogen Regulations 7
- D. L&I Cited Laborworks Because It Did Not Provide Long-Term Blood-Borne Pathogen Medical Monitoring, Training, and Vaccinations 8

V. ARGUMENT 10

- A. The Court of Appeals' Decision Will Lead to a Gap in Protection as Temporary Workers Move from Worksite to Worksite 12
- B. Laborworks' Knowledge of Blood-Borne Pathogen Exposure Should Be Considered in Determining the Employment Relationship 16

VI. CONCLUSION 20

TABLE OF AUTHORITIES

Cases

Aerotek,
2018 CCH OSHD ¶ 33,663, 2018 WL 2084250
(O.S.H.R.C.A.L.J. 2018).. 17

Air Conditioning & Elec. Sys., Inc.,
3 BNA OSHC 1351, 1975 WL 4883
(O.S.H.RC.A.L.J May 22, 1975) 17

Anfinson v. FedEx Ground Package Sys., Inc.,
174 Wn.2d 851, 281 P.3d 289 (2012)... 13

Bayley Constr. v. Dep't of Labor & Indus.,
10 Wn. App. 2d 768, 450 P.3d 647,
review denied, 195 Wn.2d 1004 (2020)... 10, 11

Becerra v. Expert Janitorial, LLC,
181 Wn.2d 186, 332 P.3d 415 (2014)... passim

Bratton Corp. v. Occ. Safety & Health Rev. Comm'n,
590 F.2d 273 (8th Cir. 1979) 17

Chao v. Occ. Safety & Health Review Comm'n,
540 F.3d 519 (6th Cir. 2008) 16

D. Harris Masonry v. Dole,
876 F.2d 343 (3d Cir. 1989) 17

Dep't of Labor & Indus. v. Slaugh,
177 Wn. App. 439, 312 P.3d 676 (2013).. 16

Elec. Smith, Inc. v. Sec'y of Labor,
666 F.2d 1267 (9th Cir. 1982) 17

Erection Co. v. Dep't of Labor & Indus.,
160 Wn. App. 194, 248 P.3d 1085 (2011)... 19

Havens Steel Co. v. Occ. Safety & Health Review Comm'n,
738 F.2d 397 (10th Cir. 1984) 17

Port of Seattle v. Pollution Control Hearings Bd.,
151 Wn.2d 568, 90 P.3d 659 (2004)... 16

Potelco, Inc. v. Dep't of Labor & Indus.,
191 Wn. App. 9, 361 P.3d 767 (2015).. 11

Staffchex,
No. 10-R4D3-2456, 2014 WL 4546924
(Cal. Occ. Safety & Health Admin. Aug. 28, 2014)............................. 17

Constitutional Provisions

Wash. Const. art. II, § 35 .... 10, 11, 13, 18

Statutes

RCW 49.17.010 .... 4, 11, 14, 18

RCW 49.17.020(4).. 11

Rules

RAP 13.4(b)(1) 3

RAP 13.4(b)(4) 3

Regulations

WAC 296-62-07521... 14

WAC 296-62-07521(11)(b) 14

WAC 296-817-200 to -50025 14

WAC 296-817-40010(1)(a) 14

WAC 296-817-40015.. 14

WAC 296-823-099 8

WAC 296-823-100 13

WAC 296-823-12005(5) 8, 9

WAC 296-823-12015(1) 9

WAC 296-823-13005 9

WAC 296-823-14005 .... 8, 10

WAC 296-823-14005(2) 9

WAC 296-823-17005(1) 9

WAC 296-840-145 14

WAC 296-840-145(1) 14

Other Authorities

Dep’t of Labor & Indus. Safety & Health Assessment & Research for Prevention, *Temporary Worker Injury Claims*, https://www.lni.wa.gov/safety-health/safety-research/files/2017/76_07_2017_TemporaryWorkerInjuryClaims.pdf 4

Dep’t of Labor & Indus., Div. of Occ. Safety & Health, *Dual Employers and DOSH Enforcement*, Directive 1.15, https://demo-public.lni.wa.gov/dA/96edf1ea0f/DD115.pdf 6, 16

Dep’t of Labor & Indus., *Temporary Workers*, https://www.lni.wa.gov/safety-health/safety-research/ongoing-projects/temporary-workers#overview 4

Mark A. Rothstein, *Occ. Safety & Health L.* § 7:7 (2020 ed.) 17

Occ. Safety & Health Admin.,
Protecting Temporary Workers,
https://www.osha.gov/temp_workers/ 4, 5, 14

Occ. Safety & Health Admin.,
Temporary Worker Initiative: Bloodborne Pathogens,
https://www.osha.gov/Publications/OSHA3888.pdf 6, 14, 16

Appendix

Dep't of Labor & Indus. v. Laborworks Industrial Staffing Specialists, Inc., No. 79717-4-I
(Wash. Ct. App. Aug. 17, 2020) ....App. 001

Dep't of Labor & Indus., *Temporary Workers*,
https://www.lni.wa.gov/safety-health/safety-research/ongoing-projects/temporary-workers#overview ....App. 012

Dep't of Labor & Indus. Safety & Health Assessment & Research for Prevention, *Temporary Worker Injury Claims*,
https://www.lni.wa.gov/safety-health/safety-research/files/2017/76_07_2017_TemporaryWorkerInjuryClaims.pdf .... App. 015

Occ. Safety & Health Admin.,
Protecting Temporary Workers,
https://www.osha.gov/temp_workers/ .... App. 016

Occ. Safety & Health Admin.,
Temporary Worker Initiative: Bloodborne Pathogens,
https://www.osha.gov/Publications/OSHA3888.pdf .... App. 020

Dep't of Labor & Indus., Div. of Occ. Safety & Health,
Dual Employers and DOSH Enforcement,
Directive 1.15, https://demo-public.lni.wa.gov/dA/96edf1ea0f/DD115.pdf .... App. 024

I. INTRODUCTION

Vulnerable to exploitation and dangerous work conditions, temporary workers suffer when there is a gap in worker safety protections between what their staffing agency and the agency's customer provides. These employers may point to each other to argue they are not responsible for ensuring a temporary worker is safe. The Washington Industrial Safety and Health Act (WISHA) corrects that gap.

But the Court of Appeals' decision undermined enforcement of these worker-safety laws by allowing a staffing agency to evade responsibility for WISHA standards even though the staffing agency knew of the hazards and was in a better position than its customer to provide the required training, vaccinations, and medical monitoring necessary to mitigate the risk at issue: contamination by blood-borne pathogens. These ongoing duties are not limited to one worksite, but apply site to site.

Blood-borne pathogens may cause workers to contract Hepatitis B or other diseases when working with sharp objects. Staffing agency Laborworks knew that its employees were exposed to sharp objects at the hosting company, which required Laborworks' compliance with the blood-borne pathogen rules. Yet, it provided ineffectual partial measures that failed to adequately protect its workers as required by law. It cannot be the rule that a staffing agency that knows about a hazard has no

responsibilities under WISHA. And the Court of Appeals' contrary position presents an issue of substantial public interest.

Also, the Court of Appeals disregarded Laborworks' worksite-to-worksite responsibilities when it ruled that Laborworks lacked sufficient control over the work environment for the court to consider it an "employer" under WISHA. This approach creates a gap in protection for temporary workers because it puts the sole responsibility on hosting companies to comply with worksite-to-worksite rules.

These worksite-to-worksite rules include not only blood-borne pathogen rules but other rules protecting against exposure to noise, lead, silica, and other hazards. The rules include threshold exposure triggers or require long-term safety precautions that will not or cannot be met by hosting companies, which may only employ a particular employee at a particular job site for one or two days. The staffing agencies' longer-term relationships with temporary workers provide a better opportunity to provide training, offer vaccinations, conduct medical monitoring, and document those activities. Closing the gap in worker protections presents an issue of substantial public interest.

The Court of Appeals' decision also conflicts with *Becerra v. Expert Janitorial, LLC*, 181 Wn.2d 186, 197–98, 332 P.3d 415 (2014), in

which the Court also considered permanency and knowledge as factors under the economic realities test.

The Court of Appeals' decision undermines worker safety, conflicts with a Supreme Court decision, and presents an issue of substantial public interest. RAP 13.4(b)(1), (4). This Court should take review.

II. IDENTITY OF PETITIONER AND DECISION

The Department of Labor and Industries (L&I) asks this Court to review *Department of Labor & Industries v. Laborworks Industrial Staffing Specialists, Inc.*, No. 79717-4-I (Wash. Ct. App. Aug. 17, 2020) (cited as "slip op." and attached as App. at 1–11).[1]

III. ISSUE PRESENTED FOR REVIEW

> Should a staffing agency that knows about a hazardous work condition, has control over a temporary worker, and has a permanent relationship with the worker be deemed an "employer" under WISHA, requiring compliance with worker-safety laws?

IV. STATEMENT OF THE CASE

A. Temporary Workers Are a Vulnerable Population

The temporary work industry is growing rapidly, with a vulnerable

[1] L&I has also petitioned for review in a related case in which review should be granted. *See Dep't of Labor & Indus. v. Tradesmen Int'l, LLC*, No. 79634-8-I (Wash. Ct. App. Aug. 17, 2020).

worker population. Dep't of Labor & Indus., *Temporary Workers*.[2] L&I treats the influx of temporary workers seriously, as temporary work poses significant hazards to workers. Temporary workers file about twice as many workers' compensation claims as permanent workers in comparable occupations. Dep't of Labor & Indus., *Temporary Worker Injury Claims.*[3] Temporary workers, who may work a short duration only, have been found to be more likely than their permanent peers to lack familiarity with their hosting employer's worksite and to receive limited communication about physical hazards, which create barriers to risk mitigation. *Temporary Workers*, App. at 12.

Because of the dangers to temporary workers, Washington has joined with the federal Occupational Safety & Health Administration (OSHA) in an initiative to protect temporary workers. *See* Occ. Safety & Health Admin., *Protecting Temporary Workers*.[4] Under Washington law, Washington's worker-safety standards must equal or exceed Occupational Safety & Health Act standards. RCW 49.17.010. OSHA recognizes the

---

[2] Dep't of Labor & Indus., *Temporary Workers*, https://www.lni.wa.gov/safety-health/safety-research/ongoing-projects/temporary-workers#overview (attached as App. at 12–14).

[3] Dep't of Labor & Indus. Safety & Health Assessment & Research for Prevention, *Temporary Worker Injury Claims*, https://www.lni.wa.gov/safety-health/safety-research/files/2017/76_07_2017_TemporaryWorkerInjuryClaims.pdf (attached as App. at 15).

[4] Occ. Safety & Health Admin., *Protecting Temporary Workers*, https://www.osha.gov/temp_workers/ (attached as App. at 16–19).

potential for abuse of temporary workers, which Washington shares:

> OSHA has concerns that some employers may use temporary workers as a way to avoid meeting all their compliance obligations under the OSH Act and other worker protection laws; that temporary workers get placed in a variety of jobs, including the most hazardous jobs; that temporary workers are more vulnerable to workplace safety and health hazards and retaliation than workers in traditional employment relationships; that temporary workers are often not given adequate safety and health training or explanations of their duties by either the temporary staffing agency or the host employer. Therefore, it is essential that *both* employers comply with all relevant OSHA requirements.

Protecting Temporary Workers, App. at 16. Temporary staffing agencies and hosting employers share "control over the worker, and are therefore jointly responsible for temporary workers' safety and health." *Id*.

OSHA firmly places responsibilities on the staffing agency to provide blood-borne training, vaccinations, and follow up after exposures:

> The staffing agency whose employees have reasonably anticipated occupational exposure to blood . . . is responsible for providing generic bloodborne pathogen information and training, ensuring that the temporary workers are provided with the required vaccinations and follow-up, providing proper post-exposure evaluation and follow-up after an exposure incident, and retaining applicable medical and training records in accordance with 1910.1030(h).

Occ. Safety & Health Admin., *Temporary Worker Initiative: Bloodborne*

Pathogens.[5]

Under L&I's established practices, if a staffing agency has notice about a hazard that has arisen on a job site and does not take steps to mitigate the hazard, L&I may cite the agency. Dep't of Labor & Indus., *Dual Employers and DOSH Enforcement*, Directive 1.15.[6]

B. Laborworks Entered Into a Daily Assignment Contract with Strategic Materials, a Recycling Facility That Processes Waste—Including Glass and Used Needles

Laborworks is an industrial staffing agency. AR 392–93. It contracted to supply employees to Strategic Materials, a recycling facility that processes waste, including glass and used needles. AR 393. In summer 2016, Laborworks had six employees working at Strategic. AR 401. Laborworks hired the employees, and only Laborworks could fire them. AR 418–20, 462. Laborworks assigns the employee to a job site, and the customer cannot change the job duty or assignment without Laborworks' permission. AR 477–78.

Laborworks is responsible for payroll and other employment obligations. AR 414–16. Laborworks paid industrial insurance and

---

[5] Occ. Safety & Health Admin., *Temporary Worker Initiative: Bloodborne Pathogens*, https://www.osha.gov/Publications/OSHA3888.pdf (attached as App. at 20–23).

[6] Dep't of Labor & Indus., Div. of Occ. Safety & Health, *Dual Employers and DOSH Enforcement*, Directive 1.15, https://demo-public.lni.wa.gov/dA/96edf1ea0f/DD115.pdf (attached as App. at 24–28). L&I reissued this directive in 2019 with no changes; it was first adopted in 2000.

unemployment premiums and agrees it is responsible under workers' compensation laws for injuries to employees at its customers' workplaces. AR 415–16. At Strategic's job site, Laborworks usually paid its employees at the end of each workday. AR 415. Laborworks considered the Strategic contract a "daily assignment." AR 415; *see also* AR 445.

Laborworks can order its employees to use safety equipment at customers' worksites. AR 429–30. Laborworks can remove its employees from a worksite it considers unsafe. AR 431.

Laborworks performs one "safety walk through" at the worksite of its customers before its employees start working there. AR 423–24. Laborworks inspected Strategic's job site. AR 423–24, 508–09, 510-11. From this inspection, it learned that its employees would be exposed to blood-borne pathogens while working at Strategic. AR 508, 510.

C. Laborworks Employees Had Poking Incidents with Sharp Objects, Which Required Following Blood-Borne Pathogen Regulations

Needles and other sharp objects may puncture workers and infect a worker with a blood-borne pathogen. Employers thus need to protect their workers against "contaminated sharps" defined as "[a]ny contaminated object that can penetrate the skin including, but not limited to, needles, scalpels, broken glass, broken capillary tubes, and exposed ends of dental

wires." WAC 296-823-099; *see also* WAC 296-823-14005.

With these sharps, there were "poking" incidents at Strategic. In February 2016, a Laborworks employee "felt a sharp object poke his hand." AR 394. Laborworks knew of the incident but maintains a practice of not doing random safety checks. AR 394, 459. It also did not provide training about blood-borne pathogens to all its workers, nor could it prove it offered vaccinations to all its workers. AR 422–23, 440, 473–75. The result was in July 2016, a needle stick injured a Laborworks employee working at Strategic. AR 495.

D. L&I Cited Laborworks Because It Did Not Provide Long-Term Blood-Borne Pathogen Medical Monitoring, Training, and Vaccinations

After an investigation into the July 2016 needle-stick injury, L&I discovered several safety violations and issued a citation to Laborworks. It alleged violations of the worksite-to-worksite standards and site-specific rules relating to exposure to blood-borne pathogens. AR 203–10.

One citation item alleged a violation of WAC 296-823-12005(5), which requires employers to provide training to employees exposed to blood-borne pathogens. AR 206. This rule is a worksite-to-worksite requirement because it provides general knowledge to workers that applies across job sites. Laborworks provided some of its temporary employees

with an L&I PowerPoint training about blood-borne pathogens. AR 411, 422–23, 440. This training was incomplete, and Laborworks did not ensure all its employees received the proper training as required by WAC 296-823-12005(5) before the July 2016 needle-stick incident. AR 498.[7]

L&I cited Laborworks for violating WAC 296-823-13005, which requires employers to make Hepatitis B vaccinations available to employees who are exposed to blood-borne pathogens in their work. AR 205. This worksite-to-worksite requirement applies across assignments. Laborworks offered some employees vaccinations, but could not find documentation showing it provided vaccinations for all employees. AR 463, 473–75.

L&I also cited Laborworks for violating WAC 296-823-17005(1) and WAC 296-823-12015(1), which require employers to maintain specific records about employees who have been exposed to blood-borne pathogens and to keep training records for three years. AR 206–07. It did not keep such records. AR 441-42. These are worksite-to-worksite rules.

Another citation item alleged a violation of WAC 296-823-14005(2), which requires employers to "use work practices designed to

---

[7] Review of the PowerPoint did not meet the training standards because WAC 296-823-12005(5) requires that the employer also have a blood-borne pathogen exposure plan and train its employees on the elements of the plan.

eliminate or minimize employee exposure" to blood-borne pathogens. AR 205. L&I cited Laborworks under WAC 296-823-14005 because its workers handled sharp objects by hand without using safety equipment such as forceps, tongs, or pliers. AR 205. Laborworks agreed there was unsafe loading. AR 495.

L&I cited Laborworks because it had notice of a hazard that had arisen on a job site—the "poking hazard"—that Laborworks learned about from a prior poking incident in February 2016 and from its job site inspection of Strategic, a recycling center with sharp objects. AR 394, 508, 510.

Laborworks appealed the citation to the Board. AR 261. The Board vacated L&I's citation. AR 7–8. L&I appealed to superior court. CP 1. The superior court reversed the Board. CP 122. The Court of Appeals reversed the superior court. Slip op. at 11.

V. ARGUMENT

The Washington Constitution mandates the protection of workers at worksites. Wash. Const. art. II, § 35; *see Bayley Constr. v. Dep't of Labor & Indus.*, 10 Wn. App. 2d 768, 781–82, 450 P.3d 647, *review denied*, 195 Wn.2d 1004 (2020). A staffing agency should not dodge these protections by a misuse of the economic realities test used to determine

whether a company is an "employer." RCW 49.17.020(4). The economic realities test is designed to ensure that state regulation applies when a company has a sufficient connection to a worker.[8] Any interpretation of the test must be interpreted against the backdrop of the state constitution (*see* Wash. Const. art. II, § 35), WISHA's purpose in providing "safe and healthful working conditions for every man and woman working in the state of Washington" (*see* RCW 49.17.010), and the required liberal interpretation to achieve the purpose of providing safe working conditions for Washington workers. *See Bayley Constr.*, 10 Wn. App. 2d at 781–82. When applying the economic realities test, this Court has emphasized it will not apply any particular factor mechanically, and "[t]he determination of the relationship does not depend on . . . isolated factors but rather upon the circumstances of the whole activity." *Becerra*, 181 Wn.2d at 198 (establishing joint-employer test for wage violations) (quotations omitted).

This case presents conflicts with *Becerra* in two ways, considered

---

[8] The factors in the economic realities test used by the Court of Appeals are:

> 1) who the workers consider their employer; 2) who pays the workers' wages; 3) who has the responsibility to control the workers; 4) whether the alleged employer has the power to control the workers; 5) whether the alleged employer has the power to fire, hire, or modify the employment condition of the workers; 6) whether the workers' ability to increase their income depends on efficiency rather than initiative, judgment, and foresight; and 7) how the workers' wages are established.

Slip op. at 6–7 (quoting *Potelco, Inc. v. Dep't of Labor & Indus.*, 191 Wn. App. 9, 31, 361 P.3d 767 (2015)).

in turn. First, in *Becerra*, the Court said that the permanency of the employment relationship can be a factor to consider under the economic realities test. *Becerra*, 181 Wn.2d at 197. Laborworks was in the best position given its longer relationship with its workers to comply with worksite-to-worksite regulations that protect temporary workers as they go from site to site: training, vaccinations, and medical monitoring. Otherwise, a gap in protection will exist between the staffing company and the hosting company.

Second, this Court has also considered whether a company knew about a violation in determining whether the economic realities test is met. *Becerra*, 181 Wn.2d at 198. The rule cannot be that a staffing agency who knows of a violation may escape liability.

Disregarding the knowledge and permanency factors conflicts with *Becerra* and presents an issue of substantial public interest.

A. The Court of Appeals' Decision Will Lead to a Gap in Protection as Temporary Workers Move from Worksite to Worksite

The Court of Appeals' decision creates gaps in protection in worksite-to-worksite rules. In this way, it undermines the state constitution's mandate to provide "protections" for those persons working

in dangerous employment. Wash. Const. art. II, § 35.[9]

Control over the work environment should not be necessary to establish an employment relationship. *See Anfinson v. FedEx Ground Package Sys., Inc.*, 174 Wn.2d 851, 871–72, 281 P.3d 289 (2012) (right to control work performed not determinative in remedial wage legislation). Other factors may be considered as part of the "whole activity." *Becerra*, 181 Wn.2d at 198. For instance, this Court looks to the permanency of the relationship as one relevant factor. *Id*. at 197. As the longer-term employer, a staffing agency controls its workers. Here, the employees work permanently for the staffing agency and temporarily with the hosting company. As part of the permanent relationship, requirements that apply from worksite to worksite are generally the staffing agency's responsibility. *See, e.g.*, WAC 296-823-100 ("This chapter applies to you if you have employees with occupational exposure to blood . . . .").

OSHA places responsibility on staffing agencies "for providing generic bloodborne pathogen information and training, ensuring that the temporary workers are provided with the required vaccinations and follow-up, providing proper post-exposure evaluation and follow-up after

---

[9] "The legislature shall pass necessary laws for the protection of persons working in mines, factories and other employments dangerous to life or deleterious to health; and fix pains and penalties for the enforcement of the same." Wash. Const. art. II, § 35.

an exposure incident, and retaining applicable medical and training records." *Temporary Worker Initiative: Bloodborne Pathogens*, App. at 21; *see also Protecting Temporary Workers*, App. at 16–17. This approach applies here because Washington must meet or exceed the Occupational Safety and Health Act's requirements. RCW 49.17.010.

Overemphasizing control over the work environment, as the Court of Appeals did, will create gaps in worker safety for the blood-borne pathogen rules and other non-site-specific rules such as hearing protection (WAC 296-817-200 to -50025), lead requirements (WAC 296-62-07521), and silica standards (WAC 296-840-145), among others. Each of these safety standards stem from cumulative exposure to safety hazards or require extended safety measures that can be met only if they apply to a more permanent employer like a staffing agency.

For example, WISHA rules relating to noise exposure can require medical monitoring starting six months after employment. WAC 296-817-40010(1)(a), -40015. For lead, workers must be provided blood testing ranging from 30 days to six months, depending on the circumstances. WAC 296-62-07521(11)(b). And for silica, employers perform medical monitoring when employees are exposed to silica at or above the action level for 30 days or more per year. WAC 296-840-145(1). A worker could

be exposed to noise, lead, or silica over the regulatory period but exposed at any one assigned workplace for only a few days per year. Under the Court of Appeals' analysis, the hosting employer would rarely have a duty to act because exposure in a temporary assignment would not trigger the duty for the employer.

Because a staffing agency's employees move from worksite to worksite, it makes sense for the staffing agency to ensure compliance with non-site-specific requirements such as monitoring blood-borne pathogen exposures, offering Hepatitis B vaccinations, providing training, and documenting these activities. This is because the hosting company may only employ the staffing agency employee for a handful of days. And it would make little sense to require the staffing agency's customers to maintain records—future customers of Laborworks would not know the identities of prior customers and would be unable to access this information. The staffing agency is in a far better position to serve the tracking function of the many worksite-to-worksite safety measures. And it can abate the hazards by complying with the relevant regulations.

A staffing agency's permanent relationship with the worker helps inform on the "whole activity" of the worker. Whether considering permanency fulfills the mandate to protect workers warrants review.

B. Laborworks' Knowledge of Blood-Borne Pathogen Exposure Should Be Considered in Determining the Employment Relationship

Laborworks did not follow WISHA standards designed to protect workers even though Laborworks knew about the hazardous conditions at Strategic. With its ineffectual efforts, it simply stood by and allowed its workers to be exposed to blood-borne pathogens.

The Court of Appeals should not have ignored Laborworks' knowledge under *Becerra*. 181 Wn.2d at 198. Interpreting the economic realities test, the Court looks to the "whole activity," including "whether the putative joint employer knew of the . . . violation." *Id.*

Becerra dovetails with both the State and federal approaches, which consider knowledge of the safety hazard as informing the employer status of staffing agencies. *Dual Employers and DOSH Enforcement*, App. at 28;[10] *Temporary Worker Initiative: Bloodborne Pathogens*, App. at 21.

Knowledge offers a chance to mitigate risk. With its knowledge, Laborworks' "obligation extends at least as far as informing [the customer] of a hazard, requesting it be abated, and ensuring steps are taken

---

[10] Focusing on the Board's view, the Court of Appeals refused to accept L&I's argument that showing knowledge of a violation combined with control over the worker could establish a staffing agency as an employer. Slip op. 6, n.2, 8. As the front-line agency implementing WISHA, L&I's interpretation should be deferred to over the Board's. *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 594, 90 P.3d 659 (2004); *Dep't of Labor & Indus. v. Slaugh*, 177 Wn. App. 439, 452, 312 P.3d 676 (2013); *see Chao v. Occ. Safety & Health Review Comm'n*, 540 F.3d 519, 526 (6th Cir. 2008).

by [the customer] to protect employees from the hazard." *Aerotek*, 2018 CCH OSHD ¶ 33,663, 2018 WL 2084250, at *5 (O.S.H.R.C.A.L.J. 2018). Instructing workers to leave the hazardous area protects workers. *Elec. Smith, Inc. v. Sec'y of Labor*, 666 F.2d 1267, 1270 (9th Cir. 1982); *Air Conditioning & Elec. Sys., Inc.*, 3 BNA OSHC 1351, 1975 WL 4883, *3 (O.S.H.RC.A.L.J May 22, 1975).

Federal cases find an employer responsible for safety violations when the employer does not control the worksite but exposes the worker to a known safety hazard. *D. Harris Masonry v. Dole*, 876 F.2d 343, 345–46 (3d Cir. 1989); *Havens Steel Co. v. Occ. Safety & Health Review Comm'n*, 738 F.2d 397, 400–01 (10th Cir. 1984); *Bratton Corp. v. Occ. Safety & Health Rev. Comm'n*, 590 F.2d 273, 275–76 (8th Cir. 1979); Mark A. Rothstein, *Occ. Safety & Health L.* § 7:7 (2020 ed.). Thus, control over the worker should be the test, not control over the worksite. A lack of control over the worksite should not excuse a staffing agency from protecting its workers. *See Staffchex*, No. 10-R4D3-2456, 2014 WL 4546924, at *3 (Cal. Occ. Safety & Health Admin. Aug. 28, 2014) ("When [a staffing agency] assigns an employee to a worksite, it has a non-delegable duty to inspect the site and make certain that it is safe for its

employees' intended activities . . . . [a staffing agency] cannot escape liability by its assertions of lack of control.") (quotation omitted).

It is antithetical to workplace safety to excuse a staffing agency, which profits from a temporary worker, from protecting its workers from known safety risks. The Washington Constitution's framers and the Legislature did not intend this result when acting to safeguard workers. Wash. Const. art. II, § 35; RCW 49.17.010. To further the constitutional and statutory mandate to protect workers, staffing agencies must be required to act on known safety violations rather than to ignore potential danger.

Otherwise, there would be the situation where a staffing agency manager could witness a temporary worker using bare hands to sort waste potentially laden with needles and Laborworks would have no obligation to do anything while the manager watches a needle puncture the worker's skin. Such a scenario may seem preposterous but could be a direct outcome from the Court of Appeals' decision.

Knowledge, combined with control over the worker, is a factor under the economic realities test to determine if a staffing agency is an employer. Laborworks had control over its workers, as shown by hiring, assigning work, paying wages, covering workers' compensation and

unemployment, training, inspecting the site, directing compliance with safety rules, monitoring the provision of safety equipment, with the ability to terminate or remove its employees from unsafe situations. AR 414–16, 418–20, 422–23, 429–31, 477–78.[11]

And Laborworks had knowledge of the hazardous conditions. Either actual or constructive knowledge establishes knowledge. *See Erection Co. v. Dep't of Labor & Indus.*, 160 Wn. App. 194, 206–07, 248 P.3d 1085 (2011). Lack of due diligence shows knowledge. *Id.* From the poking incidents and its initial job site inspection of the recycling center with sharp objects, Laborworks knew about the hazards. Laborworks knew about the February and July 2016 poking incidents. AR 394–96. It admitted that it could have protected its workers by stopping workers from working at Strategic in unsafe conditions. AR 431. And it conceded that it would not have workers work at a location where an unsafe condition

---

[11] Laborworks conceded that it had a nondelegable duty to its workers, Appellant's Br. 16, and admitted facts that show control over its workers:

> Laborworks provides training to its temporary workers. Laborworks also conducted a Job Site Safety Evaluation to ensure that its temporary workers would be in a safe environment and protected by an Accident Prevention Program . . . . Laborworks further ensured that safety vests, hearing protection, gloves, and hard hats would be provided as personal protective equipment to its temporary workers . . . . Indeed, if Laborworks knew in advance that an unsafe condition exists, it would not assign its temporary workers to that location.

Id.

exists, noting its nondelegable duty to protect its workers. Appellant's Br. 16.

With its knowledge, Laborworks became responsible for the hazardous conditions, and letting it off the hook undermines protections for all temporary workers.

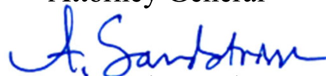
The control over the worker, combined with the knowledge and permanency of the relationship, supports that Laborworks is an employer, and presents an issue warranting review.

VI. CONCLUSION

The Court of Appeals has undermined important protections for workers, and this Court should take review.

RESPECTFULLY SUBMITTED this 16th day of September 2020.

ROBERT W. FERGUSON
Attorney General



Anastasia Sandstrom
Senior Counsel
WSBA No. 24163

Appendix

FILED
8/17/2020
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON, Respondent, v. LABORWORKS INDUSTRIAL STAFFING SPECIALISTS, INC., Appellant.	No. 79717-4-I DIVISION ONE UNPUBLISHED OPINION

CHUN, J. — Laborworks Industrial Staffing Specialists, Inc., assigned temporary workers to Strategic Materials, which operated a recycling plant. The Department of Labor and Industries cited Laborworks for violations of the Washington Industrial Safety and Health Act (WISHA) at the plant. Laborworks appealed to an industrial appeals judge and then to the Board of Industrial Insurance Appeals, arguing that, as a staffing company, with respect to the violations, it was not an employer subject to WISHA. The Board agreed and vacated the citation. The Department then appealed to the superior court, which reversed the Board's decision. Laborworks appeals. We conclude that, under the economic realities test, Laborworks did not constitute an employer for purposes of the citation and reverse the superior court's decision.

Citations and pin cites are based on the Westlaw online version of the cited material.

I. BACKGROUND

Laborworks, a staffing company, assigns temporary workers to clients in the light industrial sector.

In June 2014, Laborworks signed a General Staffing Agreement to assign temporary workers to Strategic Materials, which operates a facility that recycles and sorts waste including glass and used hypodermic needles. In the Agreement, Strategic Materials agreed to supervise the workers and to provide a safe job site:

CLIENT's Duties and Responsibilities

2. CLIENT will
   a. Properly supervise Assigned Employees performing its work and be responsible for its business operations, products, services, and intellectual property;
   b. Properly supervise, control, and safeguard its premises, processes, or systems, and not permit Assigned Employees to operate any vehicle or mobile equipment, or entrust them with unattended premises, cash, checks, keys, credit cards, merchandise, confidential or trade secret information, negotiable instruments, or other valuables without STAFFING FIRM's express prior written approval or as strictly required by the job description provided to STAFFING FIRM;
   c. Provide Assigned Employees with a safe work site, comply with all governmental laws as they may apply, including but not limited to the Occupational Safety and Health Act of 1970 (OSHA), United States Longshoremen's and Harborworker's Compensation Act, Jones Act, Equal Opportunity Act (EEO), and Immigration laws, and provide appropriate information, training, and safety equipment with respect to any hazardous substances or conditions to which they may be exposed at the work site;
   d. Not change Assigned Employees' job duties without STAFFING FIRM's express prior written approval.

Laborworks then conducted a safety walk through at the Strategic Materials job site and completed a Job Site Safety Evaluation Report. In the Report, Laborworks verified that Strategic Materials had a written safety program and hazard communication program, and would provide safety gear to the temporary workers. Strategic Materials also agreed to allow Laborworks to conduct site investigations of injuries and accidents. Laborworks provided its temporary workers assigned to the site with the Department's online blood-borne pathogens training and offered Hepatitis B vaccinations to some of the workers.

Laborworks paid the temporary workers daily based on the number of hours worked. Strategic Materials kept track of the hours worked and reported the hours to Laborworks. Strategic Materials set the base rate of pay, which Laborworks then used to determine the amount for workers' compensation premiums, unemployment compensation premiums, and commission payments. Strategic Materials also directed the temporary workers' activities and could terminate temporary workers from the job site. Laborworks could terminate the workers' employment from its staffing agency.

Laborworks learned about a February 2016 incident where a temporary worker "was poked in some way" at Strategic Materials. Another temporary worker suffered an injury in a "needle-stick incident" in July 2016.

In 2017, the Department cited Laborworks with three serious and two general violations of the Washington Administrative Code (WAC) section 296-823, which concerns occupational exposure to blood-borne pathogens. The

Department later issued a Corrective Notice of Redetermination (CNR) affirming the violations issued in the citation.

Laborworks appealed the CNR to an industrial appeals judge. Laborworks argued that it was not an employer for purposes of the WISHA and that "the Department failed to establish that any employees were exposed to blood or any other, potentially-infectious material." The industrial appeals judge affirmed the CNR.

Laborworks appealed to the Board. The Board issued a Decision and Order vacating the CNR. The Board made two findings of fact on the issue of whether Laborworks was an employer in relation to the citation:

> 4. LaborWorks, a temporary staffing company, contracted with Strategic to provider workers to work at a Strategic recycling facility. LaborWorks paid workers' compensation, unemployment insurance, and wages for workers it provided to Strategic, but Strategic determined the base wage rate. LaborWorks also provided initial training to workers it sent to Strategic but performed no random site checks at the premises.
>
> 5. Both LaborWorks and Strategic maintained the right to terminate workers. However, Strategic exerted daily control over the employees by assigning work and providing supervision over the LaborWorks workers.

Based on these findings, the Board concluded (2-1) that Laborworks was not an "employer" for WISHA purposes.[1]

The Department then appealed the Decision and Order to the superior court. Though the superior court determined that substantial evidence supported

[1] One board member dissented from the Board's decision, concluding that—under the economic realities test—Laborworks was an employer in connection with the violations. The dissenting member did not apply the knowledge standard from the Department's Dual Employer Directive, which this analysis addresses briefly below.

the Board's findings, it concluded that Laborworks was an employer and reversed the Board's decision.

Laborworks appeals.

II. ANALYSIS

In WISHA appeals, this court reviews the Board's decision based on the record before the agency. Erection Co. v. Dep't of Labor & Indus., 160 Wn. App. 194, 201, 248 P.3d 1085 (2011). We review the Board's findings of fact to determine whether substantial evidence supports them. Potelco, Inc. v. Dep't of Labor & Indus., 191 Wn. App. 9, 21, 361 P.3d 767 (2015). Substantial evidence is what "would persuade a fair-minded person of the truth or correctness of the matter." Erection Co., 160 Wn. App. at 202. If substantial evidence supports the factual findings, then the findings are conclusive and the panel next determines whether the findings support the conclusions of law. Erection Co., 160 Wn. App. at 202. We view the evidence and its reasonable inferences in the light most favorable to the prevailing party in the highest forum that exercised fact finding authority. See id. at 202. Here, we do so in the light most favorable to Laborworks, which prevailed before the Board.

"The legislature enacted [WISHA] 'to assure, insofar as may reasonably be possible, safe and healthful working conditions for every [worker] in the state of Washington.'" Erection Co., 160 Wn. App. at 201 (quoting RCW 49.17.010). We liberally interpret WISHA statutes and regulations to achieve their purpose of providing safe working conditions for every Washington worker. Erection Co., 160 Wn. App. at 202.

WISHA renders employers responsible for the health and safety of their employees. Potelco, 191 Wn. App. at 30. "Any entity that engages in any business and employs one or more employees is an employer for WISHA purposes." Martinez Melgoza & Assocs. Inc. v. Dep't of Labor & Indus., 125 Wn. App. 843, 848, 106 P.3d 776 (2005) (citing RCW 49.17.020(4)). To promote WISHA's safety objectives, if two or more employers share responsibility for the same employee, "the Department may cite multiple employers for violating workplace safety standards." Potelco, 191 Wn. App. at 30.

The Department argues that Laborworks is a liable employer under the economic realities test.[2] Laborworks responds that it is not so liable because it lacked control over the Strategic Materials job site. We conclude that, under the economic realities test, Laborworks is not an employer with respect to the violations.

"When there is a WISHA violation involving leased or temporary employees, the Board uses the 'economic realities test' to determine which employer should be issued the WISHA citation." Potelco, 191 Wn. App. at 30-31. The test involves seven factors:

1) who the workers consider their employer;
2) who pays the workers' wages;
3) who has the responsibility to control the workers;
4) whether the alleged employer has the power to control the workers;

[2] The Department also argues that we should apply a standard from its Dual Employers Directive, which would make Laborworks liable as an employer for the WISHA citations if they "knew or clearly should have known" of the violations. We recently rejected this argument in Department of Labor and Industries v. Tradesmen International, LLC, No. 79634-8 (Wash. Ct. App. Aug. 17, 2020).

5) whether the alleged employer has the power to fire, hire, or modify the employment condition of the workers;

6) whether the workers' ability to increase their income depends on efficiency rather than initiative, judgment, and foresight; and

7) how the workers' wages are established.

Potelco, Inc., 191 Wn. App. at 31. Under this test, "[t]he key question is whether the employer has the right to control the worker." Potelco, Inc., 191 Wn. App. at 31.

The record lacks evidence about the first and sixth factors. We address the other factors in turn and, in doing so, we view the evidence and reasonable inferences therefrom in the light most favorable to Laborworks.

Payment of Wages

In the Agreement, Laborworks agreed to "[p]ay Assigned Employees' wages and provide them with the benefits that [Laborworks] offers to them." And Laborworks paid the workers their wages. Thus, this factor supports citing Laborworks as an employer in connection with the violations.

Responsibility to Control the Workers

The Department argues that Laborworks had the responsibility to control the temporary workers and that this "is demonstrated by [Laborworks] hiring, assigning to sites, paying the workers, covering workers' compensation and unemployment, training, inspecting sites, directing compliance with safety rules, monitoring the provision of safety equipment, and by the company's ability to discipline, terminate, or remove it [sic] workers from unsafe situations." The Department says, "[I]n almost *all* temporary leasing situations[] both employers

control[] the workers." (Emphasis added.) But its argument fails to apply properly the economic realities test.

"[I]n leased employment situations, whether the lessor or the lessee should be cited for WISHA violations depends on the economic realities of who controls the workplace. Both employers cannot be cited unless they both have *substantial control over the workers and the work environment* involved in the violations." In re Skills Res. Training Ctr., No. 95 W253 at 3 (Wash. Bd. of Indus. Ins. App. Aug. 5, 1997) (emphasis added). Under the Agreement, Strategic Materials had the responsibility to "[p]roperly supervise Assigned Employees performing its work" and to "[p]roperly supervise, safeguard, and control its premises." Strategic Materials also took on the responsibility to "[p]provide Assigned Employees with a safe work site." Thus, under the contract, Strategic Materials bore the responsibility of controlling the workers and the job site. This factor weighs against citing Laborworks as an employer.

Power to Control the Workers

Laborworks did not have the power to control the temporary workers in most regards. Though Laborworks could assign temporary employees to Strategic Materials, its control over the temporary employees basically ended afterward. After assignment, Strategic Materials gave the daily job assignments, determined what processes the temporary workers would work on, and ensured that appropriate controls were being used. Following an initial safety inspection to determine what programs were in place and what personal protective equipment was required or provided, Laborworks did not conduct other safety

inspections. Laborworks also did not send any supervisors to the job site to accompany its temporary workers.

"[T]he [Occupational Safety and Health Commission (OSHC)] has held companies that pay employees (including employee lease-back situations) are not employers unless they control the jobsite and the employees' activities." Skills Res. Training Ctr., slip op. at 9. Though Laborworks had some general control over the workers through its power to assign the workers and the terms laid out in the Agreement,[3] it lacked the power to control the job site and the temporary workers' activities there. This factor also weighs against citing Laborworks as an employer.

Power to Fire, Hire, or Modify the Employment Condition of the Workers

Laborworks had the power to hire temporary workers and to fire them from their staffing company. Strategic Materials had the authority to fire a temporary worker from its work assignment. While the Agreement required Laborworks' approval before Strategic Materials permitted temporary workers to perform certain tasks or made changes to their job duties, Laborworks lacked the authority to change their job conditions while on the assignment. Viewing the evidence and reasonable inferences therefore in the light most favorable to Laborworks, this factor weighs against citing Laborworks as an employer.

[3] Sections 2b and 2d of the Agreement provided that Strategic Materials could not assign certain tasks to temporary workers or change their job duties without Laborworks' permission.

Establishment of the Workers' Wages

Laborworks assigned employees to Strategic Materials daily, and so it issued paychecks to the temporary workers at the end of each day. Strategic Materials would communicate to Laborworks how many hours each temporary worker worked. Strategic Materials set the base rate of pay, which Laborworks then used to determine the amount for workers' compensation premiums, the unemployment compensation premiums, and their commission payment. Because Laborworks calculated the amount of the temporary workers' wages based on how many hours Strategic Materials reported and the base wage rate Strategic Materials set, this factor weighs against citing Laborworks as an employer.

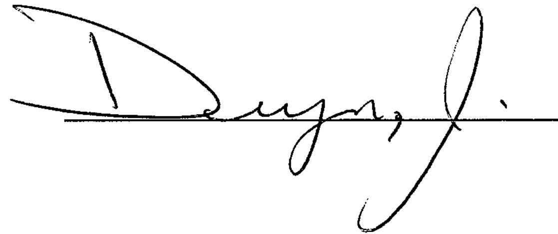
Only one factor—who pays the workers' wages—supports holding Laborworks liable as an employer for the citations. Four factors, including the two relating the control, weigh to the contrary. Thus, the economic realities test dictates that Laborworks is not an employer with respect to the violations.

We determine that substantial evidence supports the Board's findings that Strategic Materials exerted daily control over the temporary workers by assigning work and providing supervision. Substantial evidence also supports the Board's findings that Laborworks paid the workers based on a base wage rate set by Strategic Materials, Laborworks provided initial training to temporary workers but did not perform random site checks, and both parties maintained their respective right to terminate workers' employment. These findings, and application of the

economic realities test, support the conclusion that Laborworks was not an employer under WISHA with respect to the violations at issue.

We reverse.

WE CONCUR:



Overview

Temporary Workers

Background

When a worker's tenure at a particular workplace is brief, several factors may increase their risk for injury: unfamiliarity with new work practices and surroundings; limited safety training; a disproportionate share of younger workers; or an inability to recognize hazards and refuse hazardous work, or to demand appropriate protective equipment for fear of dismissal. Agency employers may not be sufficiently aware of the hazards faced by temporary workers at each of the different worksites they supply. Host employers looking for a short-term worker may invest less time in providing them with appropriate training and protection equipment. In addition, having two separate parties who are responsible for worker safety raises the possibility that neither will take full responsibility to prepare the worker adequately.

The precariousness of temporary workers' employment may also place them at greater risk for adverse physical and psychosocial hazards in their employment that lead to injury. In surveys, temporary workers have been found to be more likely than their permanent peers to experience "mismatched placements", lack of familiarity with their host employer's worksite, limited communication about physical hazards, which creates barriers to risk mitigation, and lower levels of job control and security.

The temporary help supply (THS) workforce in Washington State has grown rapidly since 1990 as compared to that of the directly employed workforce. Over the same time period the distribution of temporary help supply workers has spread beyond its traditional focus in office services towards higher hazard sectors such as construction, food processing, light assembly and warehousing/logistics.

This project uses both administrative workers' compensation data and survey-derived data to both compare temporary workers' claims rates to their standard-employed peers

and to explore the factors that could be driving the higher injury rates for temporary workers.

Goals

The overall goal of this project is to evaluate the fundamental risk factors associated with temporary agency employment by:

1. Measuring the magnitude of workers' compensation claim incidence among workers employed by temporary agencies and comparing these to workers employed under standard employment arrangements. We will isolate the effect of temporary work status and the probability of injury by controlling for other factors such as age, sex, industry and tenure.
2. Conducting interviews with recently injured temporary and permanent workers, matched by workplace and demographic characteristics and covering such topics as:
    - Most common hazards and injuries.
    - Whether they felt able to, or knew how to report hazard.
    - Safety training provided by the temp agency and the client businesses.
    - Safety equipment provided and by whom.
    - Priority given to safety by temp agency staff and client supervisors.
    - Whether temporary workers were given more hazardous work.
    - The type and format of educational materials that would be effective in improving safety.
3. Conducting interviews with temporary agency managers and managers of client businesses which use temporary employees and covering such topics as:
    - Whether temporary employees are given more hazardous jobs.
    - What training, supervision and personal protective equipment is given to temporary workers.
    - Whether temporary workers know how to report an injury hazard.

  - Whether temporary workers do not report injuries or hazardous job conditions due to fear of job loss or lack of knowledge.
  - Whether temporary workers are asked to do jobs different from what they were sent to do.
4. Developing appropriate educational materials and dissemination methods tailored to each type of industry and to each party in the temporary labor market. Areas of focus for educational materials include:
  - Hazard awareness.
  - Safe work practices.
  - Personal protective equipment.
    Employee rights to a safe workplace and to workers' compensation benefits.

Publications

SHARP Stats

Temporary Worker Injury Claims (https://lni.wa.gov/safety-health/safety-research/files/2017/76_07_2017_TemporaryWorkerInjuryClaims.pdf)

Journal Articles

Foley MP (2017). **Factors underlying observed injury rate differences between temporary workers and permanent peers.** *American Journal of Industrial Medicine*. DOI: 10.1002/ajim.22763 (https://onlinelibrary.wiley.com/doi/full/10.1002/ajim.22763). Research Findings (https://lni.wa.gov/safety-health/safety-research/files/2017/75_27_2017_Foley_TempsWorkers.pdf)

Smith CK, Silverstein BA, Bonauto DK, Adams DA, Fan ZJ, Foley MP (2010). **Temporary workers in Washington State.** *American Journal of Industrial Medicine.* DOI: 10.1002/ajim.20728 (https://onlinelibrary.wiley.com/doi/10.1002/ajim.20728).

Foley M (1998). **Flexible work, hazardous work: The impact of temporary work arrangements on occupational safety and health in Washington State, 1991-1996.** *Research in Human Capital and Development.* Eds. Sorkin A and Farquhar I. vol. 12: 123-147.

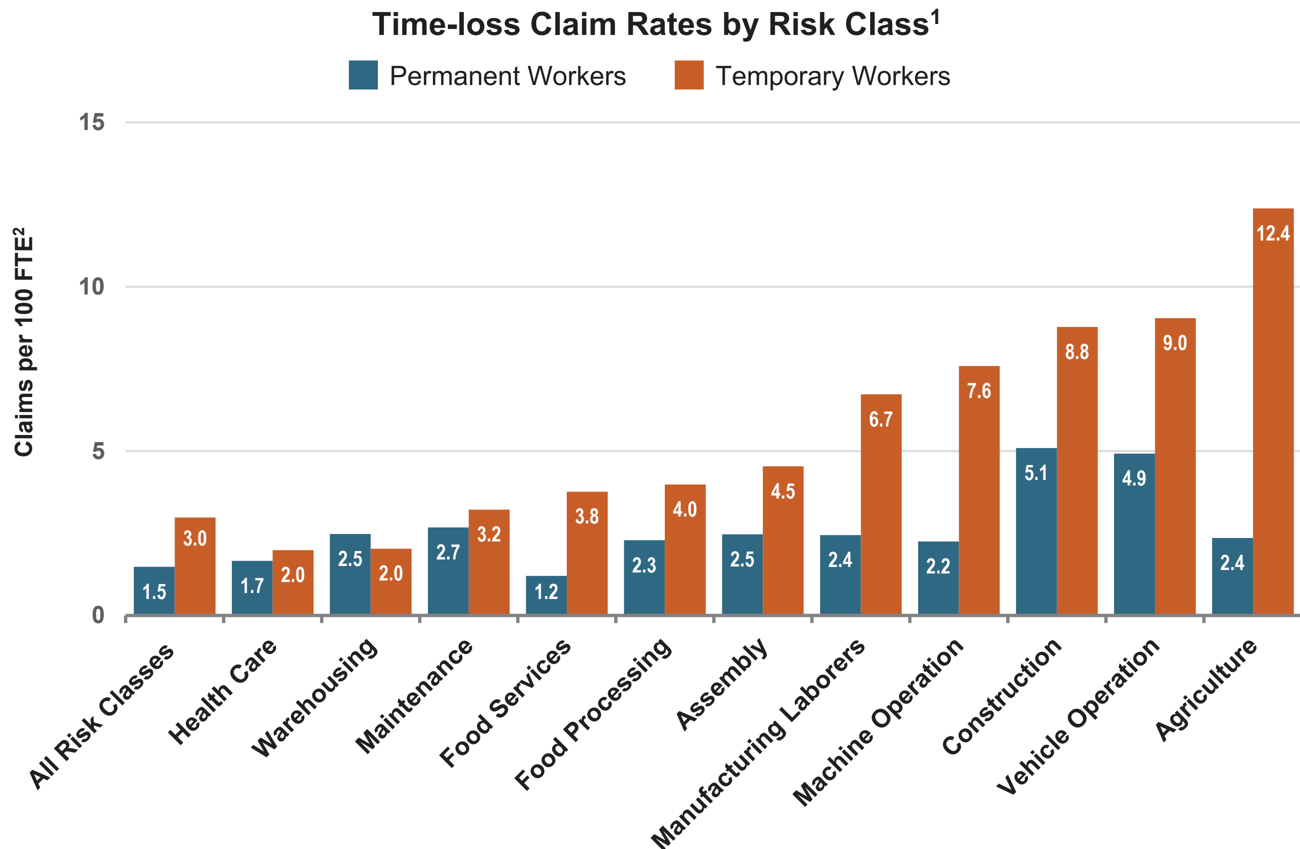
SHARP Safety & Health Assessment & Research for Prevention

SHARP Stats

Temporary Worker Injury Claims

Workers' Compensation Claim Rates: Temporary vs. Permanent Workers

Washington State Workers' Compensation System 2011–2015



- Workers' compensation claim rates for temporary workers are about twice those of permanent workers in comparable occupations.[3,4]
- Highest risk occupations for temporary workers are in agriculture, vehicle operations, construction, and machine operations.
- Lower claim rates for temporary workers in warehousing suggest an opportunity to learn from safety practices in this industry.

1. Washington State workers' compensation risk classes use industry and occupation to group workplaces with similar injury risk, with 16 designated for temporary help services
2. Full Time Equivalent. 1 FTE = 2000 hours worked in year
3. Adjusted rate ratio for all risk classes = 2.01
4. Comparisons are based on groupings of permanent worker risk classes matched to each temporary worker risk class

For more information: http://onlinelibrary.wiley.com/wol1/doi/10.1002/ajim.22763/abstract

SHARP publication: 76-07-2017

Washington State Department of Labor & Industries

Protecting Temporary Workers

Employer Responsibilities to Protect Temporary Workers

To ensure that there is a clear understanding of each employer's role in protecting employees, OSHA recommends that the temporary staffing agency and the host employer set out their respective responsibilities for compliance with applicable OSHA standards in their contract. Including such terms in a contract will ensure that each employer complies with all relevant regulatory requirements, thereby avoiding confusion as to the employer's obligations.

Joint Responsibility

While the extent of responsibility under the law of staffing agencies and host employers is dependent on the specific facts of each case, staffing agencies and host employers are *jointly responsible* for maintaining a safe work environment for temporary workers - including, for example, ensuring that OSHA's training, hazard communication, and recordkeeping requirements are fulfilled.

OSHA could hold both the host and temporary employers responsible for the violative condition(s) - and that can include lack of adequate training regarding workplace hazards. Temporary staffing agencies and host employers share control over the worker, and are therefore jointly responsible for temporary workers' safety and health.

OSHA has concerns that some employers may use temporary workers as a way to avoid meeting all their compliance obligations under the OSH Act and other worker protection laws; that temporary workers get placed in a variety of jobs, including the most hazardous jobs; that temporary workers are more vulnerable to workplace safety and health hazards and retaliation than workers in traditional employment relationships; that temporary workers are often not given adequate safety and health training or explanations of their duties by either the temporary staffing agency or the host employer. Therefore, it is essential that *both* employers comply with all relevant OSHA requirements.

Both Host Employers and Staffing Agencies Have Roles

Both host employers and staffing agencies have roles in complying with workplace health and safety requirements and they *share* responsibility for ensuring worker safety and health.

A key concept is that each employer should consider the hazards it is in a *position* to *prevent and correct*, and in a position to *comply* with OSHA standards. For example: staffing agencies might provide general safety and health training, and host employers provide specific training tailored to the particular workplace equipment/hazards.

- The key is *communication* between the agency and the host to ensure that the necessary protections are provided.
- Staffing agencies have a duty to inquire into the conditions of their workers' assigned workplaces. They must ensure that they are sending workers to a safe workplace.
- Ignorance of hazards is not an excuse.
- Staffing agencies need not become experts on specific workplace hazards, but they should determine what conditions exist at their client (host) agencies, what hazards may be encountered, and how best to ensure protection for the temporary workers.
- The staffing agency has the duty to inquire and *verify* that the host has fulfilled its responsibilities for a safe workplace.
- And, just as important: Host employers *must treat temporary workers like any other workers* in terms of training and safety and health protections.

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). 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.

OSHA also provides help to employers. OSHA's On-Site Consultation Program offers free and confidential occupational safety and health services to small and medium-sized businesses in all states and several territories, with priority given to high-hazard worksites. To locate the OSHA On-Site Consultation Program nearest you, call 1-800-321- 6742 (OSHA) or visit www.osha.gov/consultation.

Workers' Rights

Highlights

- Recommended Practices: Protecting Temporary Workers
- Policy Background on the Temporary Worker Initiative
- Temporary Worker Initiative (TWI) Bulletin No. 1 - Injury and Illness Recordkeeping Requirements
- Temporary Worker Initiative (TWI) Bulletin No. 2 – Personal Protective Equipment
- Temporary Worker Initiative (TWI) Bulletin No. 3 – Whistleblower Protection Rights
- Temporary Worker Initiative (TWI) Bulletin No. 4 - Safety and Health Training
- Temporary Worker Initiative (TWI) Bulletin No. 5 - Hazard Communication

- Temporary Worker Initiative Bulletin No. 6 – Bloodborne Pathogens
- Temporary Worker Initiative Bulletin No. 7 - Powered Industrial Truck Training
- Temporary Worker Initiative Bulletin No. 8 - Respiratory Protection
- Temporary Worker Initiative Bulletin No. 9 - Noise Exposure and Hearing Conservation
- Temporary Worker Initiative Bulletin No. 10 - The Control of Hazardous Energy (Lockout/Tagout)
- Temporary Worker Initiative Bulletin No. 11 – Safety and Health in Shipyard Employment
- Temporary Workers' Rights Pamphlet

News Releases

UNITED STATES
DEPARTMENT OF LABOR

Occupational Safety & Health Administration
200 Constitution Ave NW
Washington, DC 20210
800-321-6742 (OSHA)
TTY
www.OSHA.gov

FEDERAL GOVERNMENT

White House
Severe Storm and Flood Recovery Assistance
Diaster Recovery Assistance
DisasterAssistance.gov
USA.gov
No Fear Act Data
U.S. Office of Special Counsel

OCCUPATIONAL SAFETY & HEALTH

Frequently Asked Questions
A - Z Index
Freedom of Information Act - OSHA
Read The OSHA Newsletter
Subscribe to the OSHA Newsletter
OSHA Publications
Office of Inspector General

ABOUT THIS SITE

Freedom of Information Act - DOL
Privacy & Security Statement
Disclaimers
Important Web Site Notices
Plug-ins Used by DOL
Accessibility Statement

Temporary Worker Initiative

Bloodborne Pathogens

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 considered 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 their duty to comply with OSHA standards are common. This bulletin addresses what both the staffing agency and the host employer can do to ensure that temporary workers are protected from exposure to bloodborne pathogens in accordance with OSHA standard 29 CFR 1910.1030 — *Bloodborne Pathogens* (the standard).

Bloodborne pathogens are microorganisms in human blood and other bodily fluids that can cause infectious diseases in humans. These pathogens include, but are not limited to, the hepatitis B virus (HBV), hepatitis C virus (HCV), and human immunodeficiency virus (HIV). All occupational exposure to blood or other potentially infectious materials[1] (OPIM), including needlesticks and other sharps-related injuries, places workers at risk for infection from bloodborne pathogens. Temporary workers may be at risk for exposure to bloodborne pathogens in many professions including, but not limited to, nursing and other healthcare work, housekeeping in some industries, and emergency response.

Workers with reasonably anticipated occupational exposure[2] to bloodborne pathogens must be afforded protections in accordance with the standard, 29 CFR 1910.1030(c)(1), under the employer's written exposure control plan including but not limited to the following:

1. The standard at 29 CFR 1910.1030(b) defines "blood" to mean human blood, human blood components, and products made from human blood. Other potentially infectious materials (OPIM) means: (1) The following human body fluids: semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids; (2) Any unfixed tissue or organ (other than intact skin) from a human (living or dead); and (3) HIV-containing cell or tissue cultures, organ cultures, and HIV- or HBV-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.

2. Occupational exposure means reasonably anticipated skin, eye, mucous membrane, or parenteral (outside the intestines) contact with blood or other potentially infectious materials that may result from the performance of an employee's duties.

- Exposure determination;
- Universal precautions, engineering and work practice controls, personal protective equipment, and housekeeping;
- Procedures for HIV and HBV research laboratories and production facilities if applicable;
- Hepatitis B vaccination and post-exposure follow-up;
- Procedures for evaluating circumstances surrounding an exposure incident;
- Communication of hazards including information and training; and
- Recordkeeping, including a sharps injury log if applicable.

As joint employers, both the host and the staffing agency are responsible for ensuring that the temporary employee is properly protected against bloodborne pathogens. However, the employers may decide that a division of the compliance responsibility may be appropriate. In doing so, the staffing agency and host employer should jointly review the task assignments and job hazards to include temporary workers in an exposure control plan. The details of the protections to be provided can be clearly established in the contract language between the employers. While the employers may agree to divide responsibilities, neither employer may avoid its ultimate responsibilities under the OSH Act by shifting responsibilities to the other employer.

Host Employer Responsibilities

Generally, the host employer has the primary responsibility for developing and implementing a written exposure control plan at the worksite because the host employer creates and controls the work processes at the facility and is most familiar with tasks having the potential for occupational exposure to bloodborne pathogens. The host employer is also typically responsible for providing site-specific bloodborne pathogens training and personal protective equipment, which should be equivalent to that given to the host's own employees in the same job classifications. The host employer also has the primary responsibility for controlling hazardous conditions at its worksite, including ensuring that engineering and work practice controls, such as sharp injury protections, are in place.

In addition, the employer who has day-to-day supervision over the temporary workers, typically the host employer, is required to maintain a log of occupational injuries and illnesses under 29 CFR 1904[3] and to record injuries and illnesses of temporary workers on that log. The Bloodborne Pathogens standard requires that this employer must also maintain a sharps injury log for the recording of percutaneous (through the skin) injuries from contaminated sharps and to record such injuries occurring to temporary workers on that log.

The host employer must communicate and coordinate with the staffing agency to ensure compliance with the standard's provisions, particularly regarding post-exposure evaluation and follow-up. It is also the host employer's obligation to take reasonable measures to ensure that the staffing agency has complied with its responsibilities for hepatitis B vaccination, post-exposure evaluation and follow-up, medical and training records retention, and generic training.

Staffing Agency Responsibilities

The staffing agency whose employees have reasonably anticipated occupational exposure to blood or OPIM is responsible for providing generic bloodborne pathogen information and training, ensuring that the temporary workers are provided with the required vaccinations and follow-up, providing proper post-exposure evaluation and follow-up after an exposure incident, and retaining applicable medical and training records in accordance with 1910.1030(h). The staffing agency is also responsible for (1) violations occurring at the workplace about which the staffing agency actually knew and where the staffing agency failed to take reasonable steps to have the host employer correct the violation and (2) pervasive serious violations occurring at the workplace about which the staffing agency could have known with the exercise of reasonable diligence. See OSHA Directive, CPL 02-02-069, *Enforcement Procedures for the Occupational Exposure to Bloodborne Pathogens*, paragraph XI.B, Personnel Services.

3. www.osha.gov/temp_workers/OSHA_TWI_Bulletin.pdf

Example Scenario*

An urban out-patient surgical center, Eastern SC, Inc. (ESC) needs housekeeping workers to clean (e.g., change linens, empty trash) and resupply surgical suites and recovery rooms during an exceptionally busy period of the year. The company contracts with a personnel service, HKMed Staffing, which employs medical care staff and service employees. These employees are assigned to work at hospitals and other healthcare facilities to perform housekeeping duties. Compliance with safety and health requirements is mentioned in HKMed's contract with ESC, including coverage for the temporary workers under both ESC's and HKMed's bloodborne pathogens exposure control plans. The contract states that HKMed will provide temporary workers who have hepatitis B vaccinations and basic bloodborne pathogens training and that ESC will provide site-specific bloodborne pathogens training, work practice and engineering controls, and personal protective equipment to those temporary workers.

HKMed assigns five temporary workers to ESC. Before sending the workers to the ESC worksite, the staffing agency plays a generic bloodborne pathogens training video for them that includes general information on hazards associated with blood and OPIM, information on the hepatitis B vaccinations, and what to do should an exposure incident occur. A question and answer period is also included in the training. In addition, HKMed ensures that each worker is offered or has had the hepatitis B vaccination series.

At the worksite, the ESC human resources representative assigns the temporary workers to the surgical and recovery areas to clean the rooms, including changing linen and restocking. The workers are provided with limited site-specific training. They are not provided with an explanation of ESC's exposure control plan, but are shown where to access housekeeping and general medical supplies, where to access regulated waste containers for waste containing visible blood, and where the sharps containers are located for the disposal of used needles. They are instructed not to handle any sharps containers and to notify one of the nurses if a sharps container is full. Utility gloves and appropriate disinfecting and cleaning supplies are made available to the workers in the supply area.

A temporary worker mentions to the ESC human resources representative that oftentimes the sharps containers are full and that used sharps are sometimes found on top of the container and around patient areas. The ESC human resources representative tells the worker that the center is understaffed and she will look into it. The worker also notifies his HKMed supervisor of this situation. HKMed tells the worker to be careful. A week after the notification, one of the temporary workers experiences a needlestick while placing a used needle found in dirty bed linens into an overflowing sharps container. ESC immediately recorded the incident on the needlestick injury log and notified HKMed. HKMed sent the worker for post-exposure evaluation and follow-up.

Analysis

Eastern SC and HKMed have a joint responsibility to ensure that the temporary workers are protected from occupational exposure to blood and OPIM. Since ESC controls the worksite, it is responsible for controlling occupational exposure to blood and OPIM by considering and using safer medical devices, ensuring sharps are properly disposed, and ensuring that used sharps containers are properly maintained. ESC also must provide site-specific bloodborne pathogens training, which in this scenario was inadequate. ESC may be subject to OSHA citations under the methods of compliance, housekeeping, and information and training sections of the

standard. HKMed also has a responsibility to take reasonable steps to ensure the protection of its workers, particularly after being notified about problems with the disposal of sharps. HKMed should have contacted ESC to discuss its concerns and remedy the situation. Thus, HKMed may also be subject to OSHA citations under the housekeeping section of the standard.

Both employers took some appropriate actions with respect to the needlestick injury. Prior to starting the work, HKMed ensured that the workers were vaccinated for hepatitis B and provided generic bloodborne pathogens training. Also, HKMed ensured that the injured worker was immediately provided post-exposure evaluation and follow-up. In addition, ESC appropriately recorded the incident on the needlestick injury log.

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

State Plans

Twenty-eight states and U.S. territories have their own OSHA-approved occupational safety and health programs called State Plans. State Plans have and enforce their own occupational safety and health standards that are required to be at least as effective as OSHA's, but may have different or additional requirements. A list of the State Plans and more information is available at 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). 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 at www.osha.gov/workers.

For information on Temporary Workers visit OSHA's Temporary Workers' page at www.osha.gov/temp_workers.

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 the 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.

OSHA also provides help to employers. OSHA's On-site Consultation Program offers free and confidential occupational safety and health services 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.

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.

For more information

www.osha.gov (800) 321-OSHA (6742)

U.S. Department of Labor

OSHA 3888-09 2016

DOSH DIRECTIVE

Department of Labor and Industries
Division of Occupational Safety and Health
Keeping Washington safe and working

1.15 Dual Employers and DOSH Enforcement

February 15, 2019

I. Purpose

This Directive establishes inspection and enforcement policies for assessing situations where two or more employers may share liability for safety or health violations that expose employees to workplace hazards.

II. Scope and Application

This Directive applies to all DOSH operations statewide and replaces all previous instructions on this issue, whether formal or informal. It supplements the guidance on "creating, correcting, and controlling" employers that is provided in the DOSH Compliance Manual. This Directive has been reviewed for applicability, and remains effective with a new issue date of February 15, 2019.

III. Background

Under the 1973 Washington Industrial Safety and Health Act, employers are responsible for the workplace safety and health of their employees. Employers may also have a responsibility for the safety and health of other employees as a creating, correcting, or controlling employer. In applying these responsibilities, the department must determine whether the employer of record (primary employer), or any other involved employer, did not reasonably meet their obligations under the statute.

Dual employer situations have increased over recent years with the growth of temporary services and employee leasing agencies, which provide employees to work at a site under the supervision and control of another employer. A dual employer situation exists when two or more employers may be cited for violating a safety or health standard that created a hazard to which employees were exposed.

In assessing such situations, CSHOs must consider the roles of the:

- Employer of record, who contracts with the employee to perform work in exchange for wages or a salary and issues the employee's pay check, secures workers' compensation insurance for the employee, and usually retains hiring and firing authority; **and**
- On-site employer (secondary or host employer) who controls the employee at the worksite.

Citations related to dual employer situations are distinct and different from citations issued to general and upper-tier contractors in construction under the *"Stute"* decision, which is the subject of separate guidance.

IV. Enforcement Policies

A. The primary employer:

1. Must ensure employees are covered by an effective and appropriately tailored written Accident Prevention Program (APP) and receive all required training and Personal Protective Equipment (PPE) in order to safely perform work for the secondary employer. However, the primary employer can fulfill their obligation for training and PPE by taking reasonable steps to ensure the secondary employer provides the employees with the required training and appropriate PPE for the work to be done.
2. Will generally not be cited for safety or health violations that expose their employees to a hazard at the secondary worksite, as long as the primary employer meets the requirements in Section IV-A.1 above, and does not exercise supervision and control over the employees' work activities at the secondary worksite.
3. May be cited for safety or health violations at the secondary worksite whenever they:
   (a) Did not take reasonable steps to ensure the requirements above were met.
   (b) Disregard information about uncontrolled hazards at the worksite.
   (c) Supervise or control their employees at the secondary worksite (for example, in situations where the primary employer provides a crew, complete with a supervisor, to perform particular activities, or where the primary employer provides specialized staff not subject to the direction of the secondary employer).

B. The secondary employer will be cited for safety or health violations at the worksite when responsible for supervising or controlling the primary employer's employees at the worksite.

C. There are situations where DOSH will issue citations to both the secondary and primary employers. For example, if neither the primary employer nor the secondary employer took steps to ensure the appropriate selection and use of respiratory protection to protect employees from inhalation hazards while engaged in assigned work duties.

D. Situations where neither employer would be cited for safety or health violations are truly unforeseeable situations, or situations involving unpreventable employee misconduct. Otherwise, at least one employer will be cited for any documented safety or health violation that exposed an employee to a hazard.

V. Special Consultation and Compliance Protocols

A. Determine whether a dual employer situation exists. When safety or health violations are documented and employee exposure may involve a dual employer situation, CSHOS are expected to find out and document if there is evidence that a secondary employer was supervising, or was supposed to be supervising, the employees' work.

1. If the answer is *no*, then there is no dual employer issue.
2. If the answer is *yes*, then CSHOs are expected to apply the guidance in the remainder of this directive.

B. **Evaluate the nature of the dual-employer relationship.** CSHOs are expected to evaluate the level of secondary employer involvement by documenting answers to the following questions:

1. Was the primary employer aware or should they have been aware of the hazardous condition(s) found at the secondary worksite?
   - If so, the primary employer shares responsibility for the violation because they did not take reasonable steps to protect their employees from the hazard in question.
2. Did the primary employer control or influence work at the worksite?
   - If so, the primary employer shares responsibility for the worksite conditions and any violations that result from them. The primary employer who exercises control at the worksite cannot be relieved of safety and health obligations by a contract that assigns the responsibility for those issues to the secondary employer.
3. Did the primary employer have authority by contract, custom, or practice to enter the secondary worksite to supervise the employees' work?
   - If so, the primary employer may have a greater responsibility to take steps to identify and correct violations on the worksite.
4. Did the violation arise because the secondary employer relied on the primary employer for guidance about workplace safety or health?
   - If so, the primary employer may be responsible for the violations. In such circumstances, the secondary employer may be relieved of responsibility by demonstrating the affirmative "creating employer" defense.
5. Did the primary employer take steps to correct or prevent employee exposure to the hazardous condition found at the secondary worksite?
   - If so, then the primary employer may have reasonably fulfilled their obligations.

C. **Violations that appear to be shared between both employers.** As a general principle, all employers who knew or should have known about the safety or health violation, and who had or who controlled employees that were exposed to the hazard, are responsible and should be cited.

1. Secondary employers are normally responsible for safety or health violations and should be cited for each hazard that employees were exposed to. It does not matter whether the employees were their own or another's, or if it is determined that the primary employer is also liable for the violation.
2. A primary employer cannot be cited for safety or health violations at another worksite if the department cannot document exposure of the primary employer's employees. This is true even if the primary employer did not ensure that the secondary employer would provide effective APP coverage, adequate training, and appropriate PPE.

   In such a case, the primary employer should be messaged about the responsibility to ensure APP coverage, training, and PPE.

3. If the primary employer's employees were exposed to a hazard at the secondary site, the decision whether to cite the primary employer for the safety or health violation will be based on the nature of the violation, the level of involvement the primary employer had with the secondary worksite, and the primary employer's knowledge of the hazard.

   a. If the analysis in *Section V.B.,* above, suggests that there is no significant involvement of the primary employer at the secondary employer's worksite, safety or health violations should be cited as follows:

      (1) APP, Training and PPE Violations. The primary employer must generally be cited for any failure to comply with APP or any other safety and health standards requiring the provision of PPE or training. However, do not cite the primary employer if they were unaware of the violations **and** took "reasonable action" to ensure that the secondary employer would provide APP coverage and all required training and PPE.

      - Reasonable action is demonstrated by steps that as a whole result in a reasonable degree of certainty that APP coverage, training, and PPE will be provided to the employee as required. Reasonable action may include the following examples:

        - Making explicit arrangements in writing with the secondary employer to provide all required APP coverage, PPE and appropriate training.

        - Establishing a system where employees are not allowed to begin work at a secondary worksite until the primary employer receives a copy of the secondary employer's APP and confirmation that all required training was completed, including a description of the type of training. If the primary employer documented an on-site inspection that included reviewing the secondary employer's APP, this is an acceptable substitute for a physical copy of the secondary employer's APP on file.

      - Establishing a system of periodically monitoring the secondary employer to ensure compliance with agreements about employee safety.

      - Communicating to employees about the types of training that must be received before beginning work at the secondary site, and instructing employees to contact the primary employer immediately if the secondary employer requests that work begin before the training is received, or if employees feel that the work is unsafe.

      (2) Other Violations. If the primary employer is cited for not providing or not taking reasonable steps to provide effective APP coverage, appropriate training, or PPE, the primary employer may also be cited for other types of safety or health violations identified at the secondary worksite. In such cases, CSHOs are expected to cite the primary employer if their employees were exposed to hazards that directly relate to the deficiencies for which the primary employer is liable.

b. In addition to the situations described in *Section V.C.3.a.,* above, the primary employer can be cited if they had knowledge or clearly should have had knowledge of the violation.

Do not cite the primary employer if all of the following conditions are present:

(1) The primary employer took reasonable steps to abate the hazard, including giving the secondary employer a reasonably short timeline to correct the hazard, and the correction timeline had not yet passed without further action when the hazard was identified by DOSH.

(2) The primary employer, due to lack of direct control over the worksite, was unable to bring about immediate hazard correction.

(3) The hazard was not an imminent danger situation. Imminent danger would require the primary employer to prohibit the employee from going to work at the secondary site until the imminent danger situation was corrected.

c. In addition to the situations described in *Sections V.C.3.a. and V.C.3.b*. above, the primary employer may be cited if they were able to exercise control over the worksite, had authority to enter the site to supervise employees' work, or gave deficient advice or guidance related to employee safety or health issues.

VI. Who to Contact

CSHOs dealing with complex issues involving dual employers are encouraged to contact the Compliance Operations Manager for assistance. If DOSH staff have questions or need additional guidance or interpretive assistance, they are encouraged to contact DOSH Technical Services.

VII. Review and Cancelation

This DOSH Directive will be reviewed for applicability two years from the issue date, and will remain effective unless superseded or canceled.

Approved:

Anne F. Soiza
L & I Assistant Director
Division of Occupational Safety and Health

Supreme Court No. _________
(Court of Appeals No. 79717-4-I)

SUPREME COURT
STATE OF WASHINGTON

DEP'T OF LABOR & INDUS., Petitioner, v. LABORWORKS INDUS. STAFFING SPECIALISTS, INC., Respondent.	CERTIFICATE OF SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, she caused to be served the Department of Labor & Industries' Petition for Discretionary Review and this Certificate of Service in the below described manner:

E-Filing via Washington State Appellate Courts Portal:

Richard D. Johnson
Court Administrator/Clerk
Court Of Appeals, Division I

Susan L. Carlson
Supreme Court Clerk
Washington State Supreme Court

E-Mail via Washington State Appellate Courts Portal:

Aaron K. Owada: aaron.owada@amslaw.net
Richard Skeen: richard.skeen@owadalaw.net
Sean Walsh: sean.walsh@owadalaw.net
Owada Law, P.C.

Steven Dwyer: sdwyer@americanstaffing.net
American Staffing Association

DATED this 16th day of September, 2020.

SHANA PACARRO-MULLER
Legal Assistant

WASHINGTON ST. ATTORNEY GENERAL - LABOR & INDUSTRIES DIVISION - SEATTLE

September 16, 2020 - 3:28 PM

Filing Petition for Review

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	State of WA Dept. of Labor & Indus, Res. v. Laborworks Industrial Staffing Specialists, Inc., App. (797174)

The following documents have been uploaded:

- PRV_Petition_for_Review_Plus_20200916152609SC856062_7737.pdf
  This File Contains:
  Certificate of Service
  Petition for Review
  The Original File Name was 200916_Laborworks_PFR.pdf

A copy of the uploaded files will be sent to:

- Sean.Walsh@owadalaw.net
- aaron.owada@owadalaw.net
- elliottf@atg.wa.gov
- lniseaeservice@atg.wa.gov
- richard.skeen@owadalaw.net
- sdwyer@americanstaffing.net

Comments:

Filing: Petition for Discretionary Review and Certificate of Service. *Note: The Department is contemporaneously filing a PFR in Case No. 79634-8-I along with a Motion to Consolidate.

Sender Name: Shana Pacarro-Muller - Email: shana.pacarromuller@atg.wa.gov
Filing on Behalf of: Anastasia R. Sandstrom - Email: anastasia.sandstrom@atg.wa.gov (Alternate Email:)

Address:
800 Fifth Avenue, Ste. 2000
Seattle, WA, 98104
Phone: (206) 464-7740

Note: The Filing Id is 20200916152609SC856062