

# Contractors & Temporary Workers: Your Company's Exposure

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## Description

- ▶ “Liability and risk increase when companies fail to provide a safe environment for workers or fail to manage contractor safety. Explore potential compliance issues you may face, specific to temporary and contract workers and outside contractors.”

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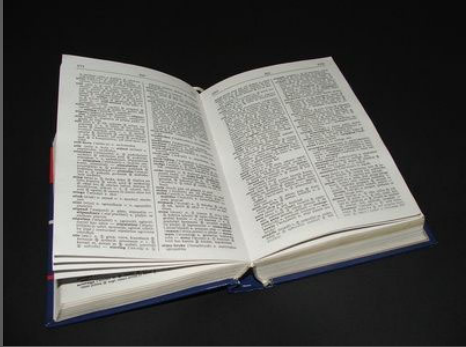
## Overview

- ▶ Definitions
- ▶ Rights & Whistleblower
- ▶ OSHA Multi-Employer Citation Policy
- ▶ OSHA Temp Worker Initiative
- ▶ Specific Standards
- ▶ Incident Investigation/Analysis
- ▶ Temp/Contractor Management
- ▶ Q&A

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## Definitions

- ▶ Employee
- ▶ Temporary Employee
- ▶ Contract Employee
- ▶ Contractor



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## Sources

- ▶ Temp agency
- ▶ Union hall
- ▶ Day labor
- ▶ Seasonal
- ▶ Intern
- ▶ Probationary
- ▶ IRS test...
- ▶ Darden Factors



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## Same Rights


**SAME RIGHTS  
FOR EVERYONE**



**MADE IN  
USA**



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## OSHA Whistleblower




THE WHISTLEBLOWER PROTECTION PROGRAM

- ▶ Section 11(c) of OSH Act of 1970
- ▶ Prohibits any person from **discharging or in any manner retaliating or discriminating** against any worker for exercising rights under the Act.
- ▶ **30 days** to file complaint



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## OSHA Whistleblower



THE WHISTLEBLOWER PROTECTION PROGRAM

Rights Include:

- ▶ Raising safety and health concerns with employer.
- ▶ Reporting work-related injury or illness.
- ▶ Filing a complaint with OSHA.
- ▶ Seeking an OSHA inspection.
- ▶ Participating in an OSHA inspection.
- ▶ Participating or testifying in any proceeding related to an OSHA inspection.

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## Protection From Discrimination

No adverse action - such as:

- ▶ Fire or lay off; Fail to hire or rehire
- ▶ Blacklist, demote
- ▶ Deny overtime, benefits or promotion
- ▶ Discipline
- ▶ Intimidate; Make threats
- ▶ Reassign affecting prospects for promotion
- ▶ Reduce pay or hours

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## OSHA Multi-Employer Citation Policy



# OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

**DIRECTIVE NUMBER:** CPL 2-00.124

**EFFECTIVE DATE:** December 10, 1999

**SUBJECT:** Multi-Employer Citation Policy

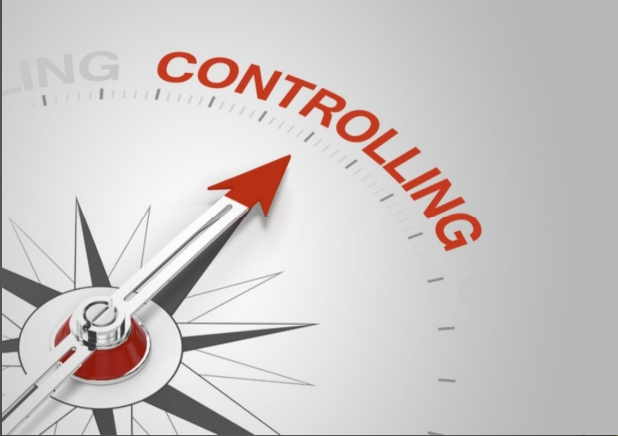
### ABSTRACT

**Purpose:** To Clarify the Agency's multi-employer citation policy.

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## Multi-Employer: 4 Types of Employer

- ▶ Controlling
- ▶ Creating
- ▶ Correcting
- ▶ Exposing




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Occupational Safety and Health Administration

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## Protecting Temporary Workers

Workers employed through staffing agencies are generally called temporary or supplied workers. "Temporary workers" are workers supplied to a host employer and paid by a staffing agency, whether or not the job is actually temporary. Whether temporary or permanent, all workers always have a right to a safe and healthy workplace. The staffing agency and the staffing agency's client (the host employer) are joint employers of temporary workers and, therefore, both are responsible for providing and maintaining a safe work environment for those workers. The staffing agency and the host employer must work together to ensure that the [Occupational Safety and Health Act of 1970](#) (the OSH Act) requirements are fully met. Learn more about [worker rights](#).

[Employer Responsibilities to Protect Temporary Workers](#)

[Joint Responsibility](#)

**Temporary Worker Initiative Bulletins**

1. [Injury and Illness Recordkeeping Requirements](#)
2. [Personal Protective Equipment](#)
3. [Whistleblower Protection Rights](#)

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## 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

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## Temporary Worker Initiative Bulletins

1. [Injury and Illness Recordkeeping Requirements](#)
2. [Personal Protective Equipment](#)
3. [Whistleblower Protection Rights](#)
4. [Safety and Health Training](#)
5. [Hazard Communication](#)
6. [Bloodborne Pathogens](#)
7. [Powered Industrial Truck Training](#)
8. [Respiratory Protection](#)

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9. [Noise Exposure and Hearing Conservation](#)
10. [Hazardous Energy \(Lockout/Tagout\)](#)
11. [Shipyards Employment](#)
12. [Exposure to Outdoor and Indoor Heat-Related Hazards](#)
13. [Ergonomics for the Prevention of Musculoskeletal Disorders \(Español\)](#)
14. [Warehousing Industry Employment \(Español\)](#)
15. [Construction Industry Employment \(Español\)](#)

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# U.S. Department of Labor

Occupational Safety and Health Administration

Washington, D.C. 20210

Reply to the attention of:

July 15, 2014

<b>MEMORANDUM FOR:</b>	REGIONAL ADMINISTRATORS
<b>THROUGH:</b>	DOROTHY DOUGHERTY Deputy Assistant Secretary
<b>FROM:</b>	THOMAS GALASSI, DIRECTOR DIRECTORATE OF ENFORCEMENT PROGRAMS
<b>SUBJECT:</b>	Policy Background on the Temporary Worker Initiative

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## Reporting & Recordkeeping

- ▶ The employer who directs and supervises activities of the temp employee must enter recordable injuries/illnesses on OSHA 300.

**OSHA's Form 300**  
**Log of Work-Related Injuries and Illnesses**

**Attention:** This form contains information relating to employee health and must be used in a manner that protects the confidentiality of employees to the extent possible while the information is being used for occupational safety and health purposes.

Year 20

U.S. Department of Labor  
Occupational Safety and Health Administration

Form approved OMB no. 1218-0170

Establishment name   
City  State

Identify the person		Describe the case			Classify the case				Enter the number of days the injured or ill worker was		Check the "Injury" column or choose one type of illness											
(A) Case no.	(B) Employee's name	(C) Job title (e.g., Welder)	(D) Date of injury or onset of illness	(E) Where the event occurred (e.g., Loading dock north end)	(F) Describe injury or illness, parts of body affected, and object/substance that directly injured or made person ill (e.g., Severe degree burn on right forearm from acetylene torch)	Deaths	Days away from work	Restricted work or job transfer	Job transfer or restriction	Other recordable cases	On job transfer or restriction	Days lost	Medical treatment beyond first aid	Loss of consciousness	Diagnosed by physician or licensed health care professional	(1)	(2)	(3)	(4)	(5)	(6)	(7)
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## HazCom 1910.1200(e)(2)

- ▶ On-site access to SDS for chemicals other employer's employees may be exposed to
- ▶ Inform other employer's employees of precautionary measures to be taken in normal operations and foreseeable emergencies
- ▶ Inform other employer's employees of labeling systems

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## HazCom Letter of Interpretation 2/3/1994, Michael F. Moreau

- ▶ Shared responsibility for training but **client has primary responsibility**. "Lessor employer" likewise has a responsibility.
- ▶ Lessor employer expected to provide training and info specified by the HCS section (h)(1). Client then responsible for providing **site-specific training**, and has primary responsibility to control potential exposure conditions.
- ▶ **Client may specify qualifications required for supplied personnel, including training in specific chemicals or PPE**. Contracts should clearly describe responsibilities of both parties.

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## Medical Surveillance - Letter of Interp. 2/3/1994, Michael F. Moreau

- ▶ Client must offer and perform required medical surveillance or evaluations. Lessor must ensure records are maintained per appropriate OSHA standards.
- ▶ Lessor must maintain cumulative exposure records (lead, noise, etc.) when Ee works for >1 Er in a year.

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### LOTO 1910.147(f)(2)(i)

- ▶ Whenever outside servicing personnel are to be engaged in activities covered by the scope and application of this standard, the on-site employer and the outside employer shall inform each other of their respective lockout or tagout procedures.

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## LOTO 1910.147(f)(2)(ii)

- ▶ The on-site employer shall ensure that his/her employees understand and comply with the restrictions and prohibitions of the outside employer's energy control program.
- ▶ (f)(3) Group lockout or tagout.

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## Fall Protection

- ▶ 1926.501-503 - Each employee...
- ▶ 1910.22-30 - Each employee...
- ▶ 1910.140 - Each employee...



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## Equipment Operation (e.g. PIT) - 1910

- ▶ 3<sup>rd</sup> party liability
- ▶ 1910.178(l)(1)(i): The employer shall ensure that each powered industrial truck operator is competent to operate a powered industrial truck safely, as demonstrated by the successful completion of the training and evaluation specified in this paragraph (l).

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## Equipment Operation (e.g. PIT) - 1926

- ▶ PIT training requirements match 1910.178
- ▶ All other equipment 1926.21(b)(4):  
The employer shall permit only those employees qualified by training or experience to operate equipment and machinery.

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## PPE

- ▶ 1910.132(d) written hazard assessment
- ▶ 1926.28(a) exposure to hazardous conditions
- ▶ Employer pays for most PPE
  - ▶ Host or temp or contractor?
- ▶ Employer responsible for employee-provided PPE
- ▶ Rx eyewear? Sunscreen? Equal treatment?

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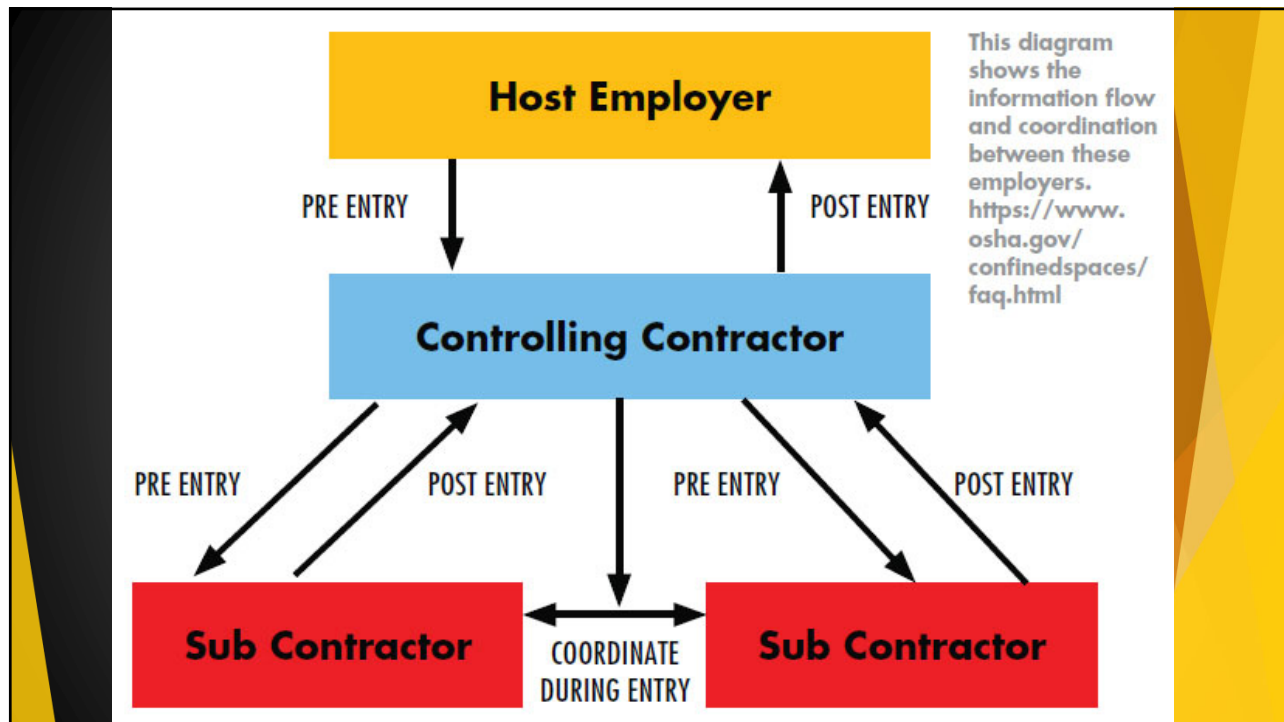
## PPE Letter of Interpretation 2/3/1994, Michael F. Moreau

- ▶ Client employers would be responsible for providing PPE for site-specific hazards to which employees may be exposed.
- ▶ Client may specify services it wants the lessor employer to supply, including provision of PPE.
- ▶ Contracts with the client employer should clearly describe the responsibilities of both parties in order to ensure that all requirements of OSHA's regulations are met.

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### Confined Space - 1910.146(c)(8)

- ▶ Host inform contractor workplace contains PRCs and entry only allowed via permit
- ▶ Host inform contractor why space is a PRCs, hazards ID'd, prev experience with space
- ▶ Host inform contractor of host precautions or procedures to protect employees in/near PRCs where contractor will be working
- ▶ ...

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## Confined Space - 1910.146(c)(8)

- ▶ Host coordinate entry operations with contractor, when both host and contractor employees will be working in/near PRCS
- ▶ Host debrief contractor following entry re: permit program followed & any hazards confronted or created in PRCS during entry.
- ▶ *In addition...*

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## Confined Space - 1910.146(c)(8)

- ▶ Each contractor retained to perform PRCS entry shall
  - ▶ Obtain any available info regarding PRCS hazards and entry operations from host employer
  - ▶ Coordinate entry with host employer when both host and contractor personnel will be working in/near PRCS
  - ▶ Inform host of PRCS program contractor will follow and any hazards confronted/created in PRCS either through debriefing or during entry operation.

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## Confined Space - 1926.1203(i)

- ▶ If there is no controlling contractor present at the worksite, the requirements for, and role of, controlling contractors in this section must be fulfilled by the host employer or other employer who arranges to have employees of another employer perform work that involves permit space entry.

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## Confined Space - 1926.1203(h)(1)

- ▶ Before entry, host provide to contractor:
  - ▶ Location of each PRCS
  - ▶ Hazards/potential hazards in each PRCS
  - ▶ Precautions host OR previous controlling contractor OR previous entry employer implemented for protection of Ees in space

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## Confined Space - 1926.1203(h)(2)

- ▶ Before entry, controlling contractor:
  - ▶ Obtain host info re PRCS hazards and previous entry operations
  - ▶ Provide following info to each entity entering PRCS, AND any other entity at worksite whose activities could foreseeably result in a hazard in the PRCS:
    - ▶ Info received from host
    - ▶ Any additional info controlling Er has about info received from host
    - ▶ Precautions host, controlling contractor, or other entry employers implemented for protection of Ees in PRCS

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## Confined Space - 1926.1203(h)(3)

- ▶ Before entry, each entry Employer must
  - ▶ Obtain all controlling contractor's info regarding PRCS hazards and entry ops
  - ▶ Inform controlling contractor of PRCS program entry Employer will follow, including any hazards likely to be confronted or created in each PRCS

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## Confined Space - 1926.1203(h)(4)

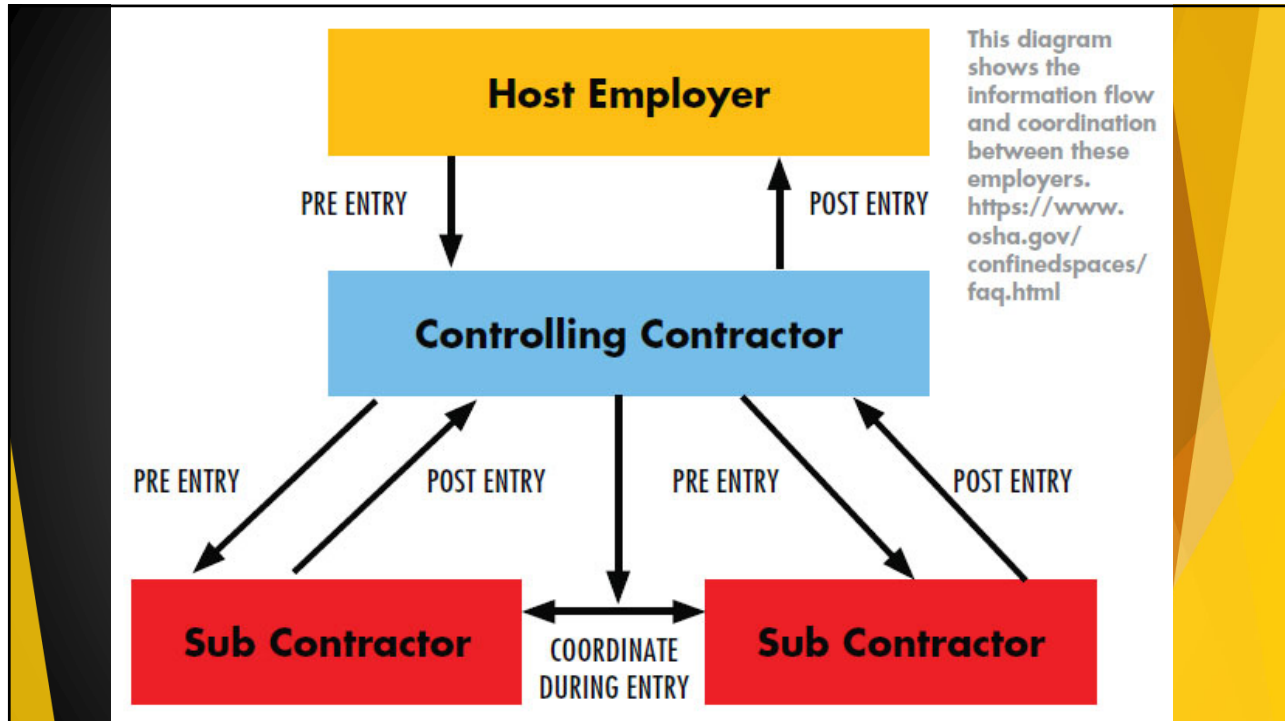
- ▶ Controlling contractor and entry Employer must coordinate entry operations when
  - ▶ More than one entity performs PRCS entry at same time; or
  - ▶ PRCS entry is performed at same time any activities are performed that could foreseeably result in a hazard in the PRCS

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## Confined Space - 1926.1203(h)(5)

- ▶ After entry operations
  - ▶ Controlling contractor must debrief each entity that entered a PRCS regarding PRCS program followed, any hazards confronted or created during entry
  - ▶ Entry Employer must inform controlling contractor timely of PRCS program followed and any hazards confronted or created during entry
  - ▶ Controlling contractor must inform host of info exchanged with entering entities

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## Incident Investigation

- ▶ “Both the host employer and staffing agency should track and where possible, investigate the cause of workplace injuries.” (OSHA 3735)

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## Incident Investigation

- ▶ “...employers should conduct thorough investigations of injuries and illnesses, including incidents of close-calls, in order to determine what the root causes were, what immediate corrective actions are necessary, and what opportunities exist to improve the injury and illness prevention programs. It is **critical that both the staffing agency and host employer are engaged in partnership** when conducting these investigations.” (OSHA 3735)

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## Incident Investigation

- ▶ “The staffing agency should follow up on a worker’s safety and health concerns and any complaints with the host employer, as well as investigate any injuries, illnesses and incidents of close calls.” (OSHA 3735)

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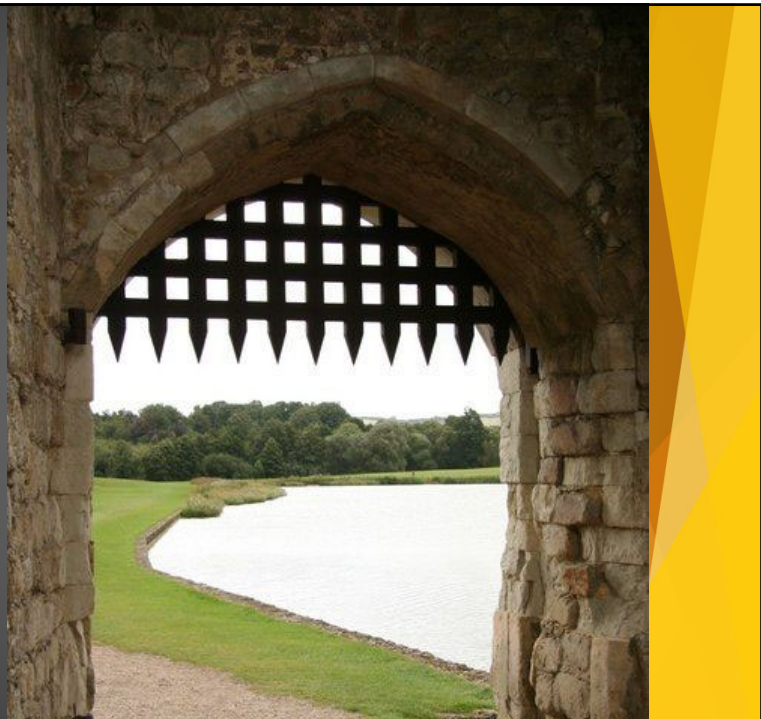
## Language

- ▶ Training must be provided in a language and vocabulary the employee understands.
- ▶ OSHA CPL 2-2.38D, 1998.
- ▶ OSHA Memorandum “OSHA Training Standards Policy Statement” April 28, 2010.



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## Temp Agency & Contractor Vetting/ Pre-Qualification



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# Negligent Supervision



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# Terms of Contract



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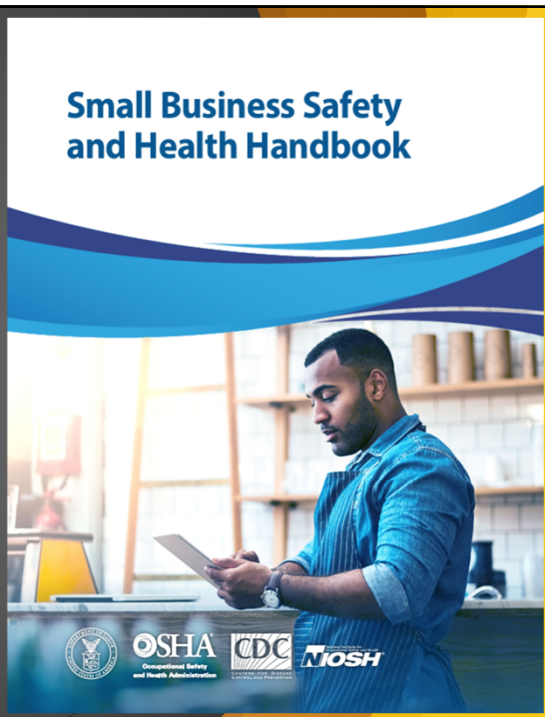
## Resource: Fed OSHA Sample Plans

<https://www.osha.gov/complianceassistance/sampleprograms>

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## Resource

<https://www.osha.gov/complianceassistance/sampleprograms>



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## Resource: Compliance Assistance QuickStart

- ▶ <https://www.osha.gov/complianceassistance/quickstarts>

### Compliance Assistance Quick Start

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**Compliance Assistance Quick Start**

**GENERAL INDUSTRY**

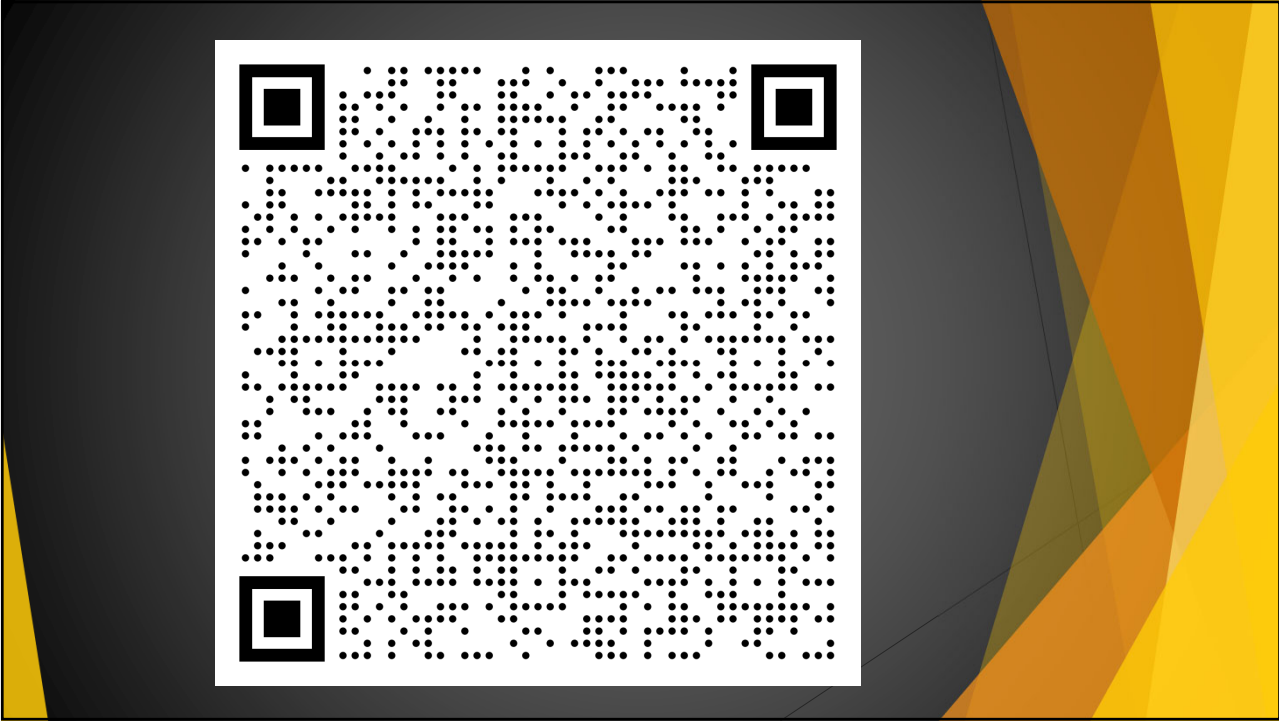
Home Step 1 Step 2 Step 3 Step 4 Step 5 Step 6 Step 7

Follow the steps below to identify the major OSHA general industry requirements and guidance materials that may apply to your workplace. These steps will lead you to resources on OSHA's website that will help you comply with OSHA requirements and prevent workplace injuries and illnesses.

- **Step 1:** [OSHA Requirements That Apply to Most General Industry Employers](#)
- **Step 2:** [OSHA Requirements That May Apply to Your Workplace](#)
- **Step 3:** [Survey Your Workplace for Additional Hazards](#)
- **Step 4:** [Develop a Comprehensive Jobsite Safety and Health Program](#)
- **Step 5:** [Train Your Employees](#)
- **Step 6:** [Recordkeeping, Reporting and Posting](#)
- **Step 7:** [Find Additional Compliance Assistance Information](#)



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**Comments? Questions?**

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