DOLI Virginia Occupational Safety and Health VOSH

VOSH PROGRAM DIRECTIVE: 02-011 **ISSUED: October 1, 1993**

SUBJECT: Temporary Help Supply Services Used by Employers

A. Purpose.

This Directive clarifies certain responsibility issues with regard to citing employers who utilize employees hired from temporary help services.

This Program Directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to VOSH Personnel regarding internal operation of the Virginia Occupational Safety and Health Program and is solely for the benefit of the program. This document is not subject to the Virginia Register Act or the Administrative Process Act; it does not have general application and is not being enforced as having the force of law.

B. Scope.

This Directive applies to all VOSH personnel.

C. References.

Memorandum from John B. Miles, Jr., Director, OSHA Directorate of Field Operations (February 28, 1985)

Recordkeeping Guidelines for Occupational Injuries and Illnesses (September 1986)

D. Cancellation.

Not Applicable.

E. Action.

The Assistant Commissioner for Enforcement, Directors and Supervisors shall assure that the guidelines established in this directive are adhered to during inspections where employers, who are using temporary help supply services, are being cited for violations of safety and health laws, including exposure monitoring and medical recordkeeping.

F. Effective Date.

September 1, 1993

G. Expiration Date.

Not Applicable.

H. Background and Summary.

NOTE: **The VOSH standard for medical recordkeeping, Part 1910.20, differs from the federal standard. Refer to VOSH Program Directive 02-008 (April 15, 1993) for further detail.**

The federal standard provides that the medical records of employees who have worked for less than one (1) year for the employer need not be retained beyond the term of employment, if they are provided to the employee upon the termination of employment.

The VOSH standard, however, makes no provision for short-term employees. Under the VOSH standard, the utilizing employer retains the responsibility for maintaining each employee's medical records. Under the federal OSHA standard, however, it is the responsibility of the short-term employee to maintain his/her own cumulative record if one is desired.

In identifying the employer of an employee, it is important to determine who controls the manner in which the employee performs his/her assigned work. Since the facts surrounding each situation will differ, federal OSHA suggests the following general policy should be used for guidance:

1. In general, the assumption is that the employer using the temporary employees (utilizing employer) will also be the employer controlling and supervising them. The utilizing employer, consequently, will be the one responsible for providing necessary and appropriate personal protection equipment (PPE) to those temporary employees as well as to all of that employer's other permanent employees.

2. Since the utilizing employer is generally responsible for all employees working in the establishment, including the temporary service employees, that employer also has responsibility for observing the requirements of the standards and regulations with respect to those employees, including exposure monitoring and medical recordkeeping.

3. In the matter of medical recordkeeping, VOSH and OSHA standards both require employee medical records to be preserved and maintained for at least the duration of employment plus thirty (30) years, **except** for health insurance claims records that are maintained separately from the employer's medical program and its records. Unlike VOSH, federal OSHA makes it possible for each employee, whether hired permanently by the company or obtained through a temporary help supply service, to maintain his/her own cumulative record if such a record is desired.

4. Citations for all safety and health hazards associated with conditions at the workplace to which employees are exposed shall be issued against the utilizing employer. Violations of standards require abatement of the violative condition; and, since the offending condition is located within the premises of the utilizing employer, that employer is responsible for correcting those violations.

As a general rule, citations may be issued against the temporary help employer if correction by that employer is essential to obtain abatement of the violation of the standard or regulation.

The responsibility for keeping and maintaining injury and illness records belongs to the employer who controls and supervises (i.e., has responsibility for the day-to-day direction of the employee's activities) the temporary help employees. This will normally be the utilizing employer.

Because temporary help services have been exempt from the requirement to keep injury and illness records by the Bureau of Labor Statistics, U.S. Department of Labor, it is not possible to hold them responsible for maintaining records on employees they place in temporary positions. Thus, only the utilizing employer will be required to record injuries and illnesses suffered by temporary employees in the workplace.

Since the utilizing employer is required to maintain injury and illness records, the company's LWDI rate will not be improperly lowered, and general schedule inspections will not be avoided when the establishment accident rate warrants them.

Carol Amato
Commissioner

Attachment: Memorandum from John B. Miles, Jr., Director, Directorate of Field Operations (February 28, 1985).

Distribution: Commissioner of Labor and Industry
Assist. Commissioner - Enforcement
Assist. Commissioner - Training & Public Services
Directors and Supervisors
Consultation Services Staff
Training Staff
OSHA Regional Administrator, Region III