

MANAGING THE RISKS OF TEMPORARY WORKERS

With today's tighter job market, many scrapyards have turned to temporary or leased labor to fill their staffing needs. Doing so offers some business advantages but also some additional risk.

Without proper safety training, temporary workers can injure themselves or others. The RecycleGuard program has seen a trend in related losses that include a leased worker killed while repairing a conveyor belt, a temporary staffer who broke his leg closing a stuck overhead door, and a temporary employee who directed a peddler to a restricted part of the yard, where the peddler was struck by a forklift. In addition to facing the human toll of these incidents, the yards that experienced them faced significant financial losses.

To avoid or mitigate such losses, choose your employment agency carefully. Look for one that categorizes its workers as its employees, not independent contractors. By doing so, you can more easily make the case that they're not your employees should they cause or be involved in an accident. Also make sure the agency places a priority on worker safety. A representative should visit your worksite and understand all the potential hazards so the agency can train staffers appropriately.

Also, learn how the U.S. Occupational Safety and Health Administration, local law, and your insurance policies define *employee*. Depending on how much control and direct supervision you have of temporary workers, they could meet the definition of employee, making you vicariously liable for their actions or their workplace injuries.

In the employee-leasing agreement, include the appropriate contractual risk-transfer wording to transfer exposures and prevent significant losses. Look for the following elements:

Indemnification agreements. These agreements shift liability from one party to another in the event of a loss or claim. Indemnification reimburses another party for a loss due to a third party's or one's own act or default. Have the agreement give the other party not just a duty to indemnify, but also a duty to provide defense following a loss or claim. Some state statutes limit the use of indemnification agreements, especially when overly broad, so consult legal counsel when drafting the contract.

Hold-harmless agreements. These absolve another party from responsibility for damage or other liability arising from the work being performed.

With these agreements in place, even if the other party does indemnify, it cannot then come back to recover its losses from your company.

Additional-insured status. To ensure the agency can fulfill its contractual duty from a financial perspective, make your company an additional insured party on its general liability, automobile, and umbrella policies. Doing so will force its policy to respond directly on your behalf for defense and indemnification. A specific endorsement is better than a blanket endorsement, and you want it to cover general liability for both ongoing and completed operations.

A written contract between your company and the agency can be the trigger for AI status, so again, be sure to have one in place. In most cases, the staffing agency's general liability policy will cover it for liability it assumes in an "insured contract" should it cause the liability within the policy's limits, terms, and conditions. Also verify that the indemnitor has sufficient policy limits.

Waiver of subrogation. Request a waiver of subrogation in your favor on the agency's worker's compensation, general liability, auto, and umbrella policies. If a temporary employee is injured while working on your behalf, this will prevent the agency's worker's comp carrier from pursuing recovery from your company.

In addition to taking the above steps, get copies of the agency's certificates of insurance and the declarations pages of its policies. And talk to your insurance broker about specific staffing endorsements you should have on your own insurance policies, such as an alternate-employer endorsement on your worker's comp policy and a "coverage for injury to leased workers" endorsement on your commercial general liability policy.

Laws and circumstances vary, so consult your legal counsel, insurance broker, risk manager, or insurance carrier for more specific advice about managing the risks of temporary employees. ■

Dan Curran is senior vice president and underwriting officer for AmWINS Program Underwriters (Portsmouth, N.H.), which underwrites RecycleGuard®, the ISRI-sponsored insurance program. Reach him at 603/334-3027 or daniel.curran@amwins.com. This article is for informational purposes only. It is not intended to provide legal advice. Readers should not rely on this document or act upon any of the information it contains without first consulting competent legal counsel.



Depending on how much control and supervision you have of temporary workers, they could meet the definition of employee.

