

Worker Leasing VS. Temporary Staffing

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Department of Consumer
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Workers' Compensation
Division



Worker Leasing
Program

Introduction

Workers' compensation and workplace safety:
two sides of the same coin.

Injury claims increase workers' compensation premiums. This encourages employers to ensure safe workplace practices to reduce injuries.

Coverage and reporting requirements are different for leasing and staffing companies.





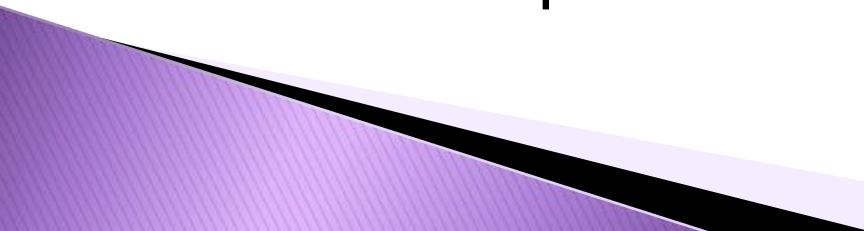
Providing workers to a client by contract
and for a fee is considered leasing

UNLESS

temporary placement is documented and
can be verified by the Workers'
Compensation Division.

Worker Leasing Company

aka Professional Employer Organization (PEO)

- ▶ Employer of record for **permanent** workers placed at a client employer.
 - ▶ Manages the client's human resources and administrative functions, often including benefits and workers' compensation insurance.
 - ▶ Requires license.
 - ▶ Requires procedure to ensure clients comply with OSHA workplace safety requirements.
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Temporary Staffing

- ▶ Employer of record for workers placed **Temporarily** at a client employer.
- ▶ Placement must meet Oregon's legal definition of "temporary."
- ▶ Requires contemporaneous documentation establishing temporary status.
- ▶ WCD can require verification of temporary status. Without evidence, leasing will be presumed.

“Temporary Basis”

“Temporary basis” is defined within the worker leasing statutes and administrative rules.

ORS 656.850(1)(b) & OAR 436-050-0420

The law requires temporary staffing companies to create **contemporaneous documentation** of the **duration** of the work to be performed and the client’s **“special situation”** that resulted in the temporary placement arrangement.

“Special Situation”

- ▶ Employee absences or leaves
- ▶ Professional skill shortage
- ▶ Seasonal or sporadic workload increase
- ▶ Special assignment or project
- ▶ Student work – through work experience program
- ▶ Temp-to-hire
 - must be part of client’s pre-established placement program

Workplace Safety

Temporary and Leasing companies share an important similarity regarding worker safety:

- ▶ Both are the legal employer
- ▶ Neither has direct control over the worksite where their employees are placed.

Workers' Compensation

- ▶ Either the leasing company or the client provides the coverage.
- ▶ The policy must cover all leased and non-leased workers of the client.
- ▶ Claims for leased workers are calculated as part of client's experience rating.
- ▶ Staffing company provides coverage for temporary workers.
- ▶ Client provides coverage for permanent workers.
- ▶ Claims for temporary workers are calculated a part of staffing company's experience rating.

Leasing company

Staffing company

Risks of mis-classifying leased workers

- ▶ Subjects company to civil penalties for leasing without a license.
- ▶ Exposes company to liability for uninsured claims of client's non-temporary staff.
- ▶ Eliminates "exclusive remedy" provision; Subjects company and client to civil suit for claims filed while using unlicensed company.

Review

- ▶ License required
- ▶ State regulated
- ▶ Permanent workers
- ▶ Workers' compensation insurance covers all employees at the worksite, leased and non-leased.
- ▶ No license required
- ▶ Not state regulated
- ▶ Temporary workers
- ▶ Workers' compensation insurance covers only temporary employees placed at worksite.

Worker Leasing

Temporary Staffing

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Questions?