

# WORK COMP INSIGHTS

## Workers' Compensation Claims for Leased or Temporary Workers

Many companies are increasingly turning to staffing agencies to meet their personnel needs for a variety of reasons, including increased workloads and high employee turnover rates. Companies that use staffing agencies can save money because they avoid selecting, hiring and training new full-time employees. In addition, using staffing agencies frequently offers companies peace of mind because they know that workers will show up and perform their duties consistently.

But what happens if one of the staffing agency workers is hurt on the job? Who is responsible for covering the injury? What if the injured worker wants to sue the staffing agency's client company for negligence? Answering these questions requires a thorough understanding of the employment relationships between the staffing agency worker and the client company. And the way employees are classified affects how the staffing agency and the client company's workers' compensation and commercial general liability (CGL) policies apply to work-related injuries.

### Workers' Compensation Versus CGL

Generally, companies are required to cover an injured employee's medical treatment and lost wages through a workers' compensation policy. This is a system of no-fault insurance that affords employees some security while recovering from work-related injuries. In exchange for these benefits, employees waive their right to sue their employers for negligence and related damages. Workers' compensation provisions apply only where an employer-employee relationship exists between a company and its workers.

CGL policies protect companies when third parties (non-employees) are hurt because of the company's negligence or misconduct. The issue of CGLs is particularly important for companies with staffing agency workers because it is not always clear whether an employment relationship exists between the company

and the staffing agency workers. To fully appreciate the complexity of the issue, companies must be able to properly classify staffing agency workers as either **leased workers** or **temporary workers**.

### Leased Versus Temporary Workers

The definitions for leased and temporary workers vary from state to state, so an adequate classification of staffing agency workers requires a solid understanding of state and local requirements.

For CGL purposes, a **leased worker** is an individual leased to a client company by a labor leasing firm under an agreement between the company and the labor leasing firm to perform duties related to the conduct of the company's business. The leased worker category does not include temporary workers. Under this definition, leased workers are considered employees of the client company and are, therefore, excluded from the client company's CGL.

CGL policies define a **temporary worker** as an individual furnished to a client company to substitute for a permanent employee who is on leave or to meet the company's seasonal or short-term workload conditions. Temporary workers are considered employees of the staffing agency and are covered by the staffing agency's workers' compensation policy and could be covered by the client company's CGL.

### The Coverage Gap

An insurance coverage gap exists when a leased employee is injured while in the client company's employ. Leased employees are considered to be employees of the client company for CGL purposes, but they may not necessarily qualify as employees under applicable workers' compensation regulations.

This results in employing individuals who could sue the client company for negligence (because they are not limited by applicable workers' compensation provisions).

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A company with no CGL coverage must pay any court-ordered damages (because CGL coverage does not apply to the company's employees).

## **Solutions to the Coverage Gap**

To bridge the gap created by leased workers, companies can look at shifting work-related injury liability to the staffing agency through an alternate employer endorsement or an extension of their CGL coverage to injury to leased workers.

1. *Alternate Employer Endorsement*

Client companies can negotiate with staffing agencies to include an alternate employer endorsement on the staffing agency's workers' compensation and employer liability policies. This endorsement protects the client company, providing coverage to the client company in the case of a tort action and by giving the client company all the workers' compensation coverage the staffing agency enjoys.

2. *Coverage for Injury to Leased Workers*

This endorsement can be added to the client company's CGL policy by changing the language that excludes leased workers and temporary coverage from CGL coverage. However, companies should recognize that insurance carriers will disfavor this solution as it effectively removes an exception they intentionally built into the CGL policy.

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