Temporary Workers, Permanent Concern
How to Ensure Safety and Compliance for an Ever Changing Workforce

BY DERI ROSS PRYOR

WORKING IN OR AROUND THE healthcare industry comes inherently with some risks, none more daunting than the exposure to bloodborne pathogens. The Occupational Safety and Health Administration (OSHA) estimates that in the United States 5.6 million workers are at risk for exposure. Needle stick accidents – punctures by sharps such as syringes after use on patients – are the top ranking exposures, and the Centers for Disease Control (CDC) estimates 385,000 workers sustain sharps injuries per year. The cost per accident for preventative treatments is approximately $5,000. Exposures to bloodborne pathogens are costly, financially, physically, and emotionally.

In 1991, OSHA created the Occupational Exposure to Bloodborne Pathogens Standard. There are fines associated with noncompliance, and since its implementation exposures have steadily decreased. While laundry and textile care workers are often not directly involved with or exposed to patients or the healthcare environment, handling soiled patient textiles still brings the risks of exposure, either through gross matter on the textiles or sharps inadvertently mixed in with linens. As such, they fall under the scope of the standard, and healthcare laundry facilities are required to follow it.
BBP training is essential for healthcare laundry workers. However, many laundries utilize temporary workers, some that come from agencies, who may not have had any laundry experience or BBP training. Because temp workers come and go, compliance becomes difficult. However, there are regulations in place to protect these workers and ensure they are trained for all facets of whatever job they are assigned to do.

**OSHA’s Temporary Workers Initiative**

In 2013, OSHA launched the Temporary Workers Initiative (TWI) with just such issues in mind in response to an increase in sometimes fatal accidents among temporary workers. The goal of the initiative is to establish and identify employer responsibilities regarding safety, and then hold the employer accountable, be it a host employer (where the worker is placed to perform a job) or staffing agency. While this is vital for any employee, temporary workers are a unique demographic who can easily slip through the cracks of an employer's infrastructure, and as such are the most vulnerable to workplace injury and death.

OSHA defines temporary employees as “workers hired and paid by a staffing agency and supplied to a host employer to perform work on a temporary basis.” Both the staffing agency and the host employer are considered “joint employers” and share the responsibility for the worker’s training and safety.

According to Barry Spurlock, JD, CSP, Assistant Professor at Eastern Kentucky University, since the staffing agency and the host employer share that responsibility, they can both be fined by OSHA if non-compliance is discovered. “It can become a pointing finger of responsibility at each other thing,” Spurlock said, “despite whatever contract between them is in place. The contract can play a role in determining liability but it is not dispositive.”

Spurlock maintains that although there are Indemnification/Hold Harmless clauses that can be included in contracts which “provide a means for the aggrieved party to receive compensation for monetary damages from the other party” including OSHA fines, attorney fees and so on, OSHA can still fine both parties, which then gives them a record of citation and leaves them liable to future citations for repeat noncompliance.

**Who is in Control?**

The question then becomes: What is the determining factor in liability? Spurlock says “it is all about control.” Though both entities share control, the one with the most is the one with more liability. From information provided by Spurlock, the control factors that are most probative include:

- Control the host employer has over the manner of the work the temporary is performing
- Whether the work/service provided by the temp is essential part of the host employer’s business/operations (Are they doing “production-related” work?)
- Control over workers’ schedules
- Provision of tools/equipment/machinery – who provides the tools
- Amount of skill necessary to perform the tasks
- Ability of temporary employee to exercise independent judgment
- Amount of on-site supervision provided by temporary agency

While it would seem from looking at this list, the host employer will bear most, if not all of the blame in the case of non-compliance, leaving the staffing agency free and clear. However, on OSHA’s webpage on “Protecting Temporary Workers,” it states the following:

- The key is communication between the agency and the host to ensure that the necessary protections are provided.
- Staffing agencies have a duty to inquire into the conditions of their workers’ assigned workplaces. They must ensure that they are sending workers to a safe workplace.
- Ignorance of hazards is not an excuse.
- Staffing agencies need not become experts on specific workplace hazards, but they should determine what conditions exist at their client (host) agencies, what hazards may be encountered, and how best to ensure protection for the temporary workers.
- The staffing agency has the duty to inquire and verify that the host has fulfilled its responsibilities for a safe workplace.
- And, just as important: Host employers must treat temporary workers like any other workers in terms of training and safety and health protections.

In other words, staffing agencies must determine the safety of the environment they send their workers to, and then should require proof of job specific safety training from the
host employer. Staffing agencies can, and should, provide general safety training. However, since each environment is different, it is up to the host company to develop, implement, and enforce safety training specific to their conditions. It is not feasible, nor practical, for the staffing agencies to provide that specialized training, but as already stated, they are responsible for following up that it is being done for the safety of their employees.

**Putting it All Together**

What does this mean for the laundry facility environment and BBP safety in practical terms? While the staffing agency can offer generic BBP training, it will not cover the specifics needed for the unique environment of the laundry processing environment. General BBP training will cover what BBP is, the dangers involved, and the aftermath of exposure. It is not possible for that type of training to prepare a temporary worker for what they might encounter in the facility. Unless the staffing agency has such a long standing relationship with the host employer (laundry facility) that it has developed a training program in place to cover the needs of that facility, the task of providing that training will fall to the host employer. In either case, each company has the responsibility to ensure that the workers have received that training.

Beyond training is continued compliance. Going back to the issue of control, the host employer is most likely to be the party responsible for providing such things as personal protective equipment (PPE) that is appropriate and specific to the environment, and then monitor and enforce its use on an ongoing basis. At this point, the staffing agency relinquishes quite a bit of control, relying on the host employer to live up to the terms that should be spelled out in the joint contract. The terms of the contract would also determine which party is responsible for such things as Hepatitis C vaccinations.

If an OSHA compliance officer conducts an inspection, the contract, as well as training records, will be reviewed. Additionally, interviews with workers will be done, and any non-compliance noted. They will also note whether training was conducted in a language and vocabulary all workers can understand. It becomes important to understand, then, that this training is not a one-and-done event. It must be fluid and ongoing, adapting to the environment, needs of individual workers, and changing to accommodate any changes on the healthcare landscape.

An example of the latter is the Ebola outbreak in 2014. Concerns of continued spread through contaminated hospital linens prompted the CDC to provide updated guidance, which subsequently required procedural changes, from the hospital floors to the laundry facilities. In cases such as this, updated training is required, with that responsibility in most cases to the host employer (laundry facility). Despite that, the staffing agency should still follow up to ensure such issues are being addressed properly for their employees.

Another unique subset of the laundry facility is contracted vendors. While these are more transient than temporary workers used for daily operations, depending on the vendors’ role, they may also fall under the scope of scrutiny in a non-compliance event or OSHA inspection. The liability of vendors would have to be determined on a case by case basis, and Spurlock advises utilizing the aspects of control listed above.

While it may seem the thrust of this information is geared towards legalities and the avoidance of non-compliance citations and/or fees, it’s important to remember these regulations and penalties are in place for only one reason: the safety of employees. Especially in a healthcare laundry facility which is so far removed from direct contact with patients or BBPs, it is easy to become less diligent, thinking the chances of exposure is negligible. Be that as it may, it only takes one incident to have OSHA at your door, and devastation to the injured worker.

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