

TEMPORARY WORKERS: UNDERSTAND YOUR LIABILITY

ALLIANZ RISK CONSULTING



Image: Shutterstock

Today's unpredictable economy has caused some businesses to use temporary workers supplied by agencies.

Temporary workers can sometimes benefit companies by:

- Controlling operating costs, including workers' compensation insurance premiums, by limiting payroll
- Enabling rapid adjustment to business swings
- Reducing problems associated with lay-offs, such as discrimination and wrongful termination lawsuits
- Providing specific levels of expertise not currently available within the existing workforce

However, the use of temporary workers creates an exposure to the employer's Commercial General Liability (CGL) policy. When a temporary employee is injured on the job, their injury claim can become a general liability claim against the employer's policy, in addition to the workers' compensation claim that may be available through their primary employer, the temporary services firm.

WHO IS A TEMPORARY WORKER?

The CGL generally excludes injuries to employees, but this exclusion does not apply to "temporary workers," creating added exposure to your business.

A “temporary worker” is defined in the CGL policy as “a person who is furnished to the policyholder to substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions.” The “furnished to” language establishes the requirement that a temporary worker is not hired by the insured, but is hired through an employment agency.

An employer’s level of general liability exposure correlates to the workers’ compensation exposure. For example:

- Low hazard – office and clerical operations
- Moderate hazard – retail and warehousing operations
- High hazard – manufacturing and processing operations

When a claim is filed against the employers’ CGL policy, the injured worker’s attorney will attempt to establish some form of “negligence” on the part of the employer. The attorney may try to show negligence in areas such as:

- Training
- Supervision
- Maintenance of machinery/equipment/facilities
- Safeguarding of machinery

WHAT CAN BE DONE TO HELP LIMIT LIABILITY?

Provide the same orientation, training and supervision to temporary workers as full-time employees receive for the specific job tasks to be performed. It is not necessary to provide training to manage exposures that the temporary worker will not confront.

In many situations, it’s recommended to identify a temporary worker visually, such as with a different colored hard hat, safety vest, identification badge, etc. This helps experienced workers and supervisors know who should be where, and to caution temporary workers if unsafe behavior is observed.

Also, check the agency’s credentials and reputation, its financial condition, its employee screening and selection practices (including hiring and firing), safety training, job site inspection process, claim handling procedures, and other client references.

Have legal counsel review written contracts with the employment agency for hold harmless and indemnification agreements. Use language in favor of the employer, indemnifying and holding it harmless by the temporary services provider from losses not resulting from the employer’s negligence.

Require the temporary services agency to:

- Carry workers’ compensation insurance on its employees and furnish a current certificate of insurance.
- Show your company as an “additional insured” on the agency’s CGL insurance policy.



Design: Graphic Design Centre

Copyright © April 2020 Allianz Global Corporate & Specialty SE. All rights reserved.

The material contained in this publication is designed to provide general information only. While every effort has been made to ensure that the information provided is accurate, this information is provided without any representation or guarantee or warranty of any kind about its accuracy and completeness and neither Allianz Global Corporate & Specialty SE, Allianz Risk Consulting GmbH, Allianz Risk Consulting LLC, nor any other company of Allianz Group can be held responsible for any errors or omissions. This publication has been made on the sole initiative of Allianz Global Corporate & Specialty SE. All descriptions of services remain subject to the terms and conditions of the service contract, if any. Any risk management duties as laid down in the risk service and/or consulting contracts and/or insurance contracts, if any, cannot be delegated neither by this document, nor in any other type or form. Some of the information contained herein may be time sensitive. Thus, you should consult the most recent referenced material. Some of the information given in this publication may not apply to your individual circumstances. Information relating to risk services is intended as a general description of certain types of risk and services to qualified customers. Allianz Global Corporate & Specialty SE do not assume any liability of any kind whatsoever, resulting from the use, or reliance upon any information, material or procedure contained in this publication.

Allianz Global Corporate & Specialty SE, Global Communications, Dieselstrasse 8, 85774 Unterfoehring, Germany

Commercial Register: Munich, HRB 208312