



## **OSHA REGULATION: Section 1904.31 Covered employees**

Whether an employment relationship exists under the Act is determined in accordance with established common law principles of agency. At common law, a self-employed "independent contractor" is not an employee; therefore, injuries and illnesses sustained by independent contractors are not recordable under the final Recordkeeping rule. To determine whether a hired party is an employee or an independent contractor under the common law test, the hiring party must consider a number of factors, including the degree of control the hiring party asserts over the manner in which the work is done, and the degree of skill and independent judgment the hired party is expected to apply. **Loomis Cabinet Co. v. OSHRC**, 20 F.3d 938, 942 (9th Cir. 1994).

Other individuals, besides independent contractors, who are not considered to be employees under the OSH Act are unpaid volunteers, sole proprietors, partners, family members of farm employers, and domestic workers in a residential setting. See 29 CFR § 1975.4(b)(2) and § 1975.6 for a discussion of the latter two categories of workers. As is the case with independent contractors, no employment relationship exists between these individuals and the hiring party, and consequently, no recording obligation arises.

A related coverage question sometimes arises when an employer obtains labor from a temporary help service, employee leasing firm or other personnel supply service. Frequently the temporary workers are on the payroll of the temporary help service or leasing firm, but are under the day-to-day supervision of the host party. In these cases, Section 1904.31 places the recordkeeping obligation upon the host, or utilizing, employer. The final rule's allocation of recordkeeping responsibility to the host employer in these circumstances is consistent with the Act for several reasons.

First, the host employer's exercise of day-to-day supervision of the temporary workers and its control over the work environment demonstrates a high degree of control over the temporary workers consistent with the presence of an employment relationship at common law. See **Loomis Cabinet Co.**, 20 F.3d at 942. Thus, the temporary workers will ordinarily be the employees of the party exercising day-to-day control over them, and the supervising party will be their employer.

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