I HAVE TEMPORARY WORKERS, SO WHAT'S THE PROBLEM?

Problem # 1:

If a temporary worker is hurt on your premises arising out of your negligence such as failure to maintain your parking lot or to provide safe equipment, the injured worker will be paid loss of wages and medical bills from the workers' compensation insurance carrier of the temp agency. That insurance carrier could then sue you, also known as subrogation, to recover what it pays to the worker.

Solution:

Obtain an agreement from the temp agency that it will waive its rights to sue you to recover its losses and also the losses of its workers' compensation insurance carrier in the event of injury to its employee, your temp worker.

This will also require an agreement by its workers' compensation carrier as evidenced by a waiver of subrogation endorsement on its workers' compensation policy. A sample endorsement is attached.

Also make sure that the temp agency has added an alternate employer endorsement to its workers' compensation policy. Also see attached.

Problem # 2:

The temp worker, or in the event of death, that worker's estate can also sue you for injury. An agreement from the temp agency will not block this from happening.

Solution:

Obtain from any temporary workers an Acknowledgement of Status and Hold Harmless. A suggested Agreement is attached:
Problem #3:

If I don’t follow these recommendations, won’t I still be covered by my commercial general liability insurance policy that covers injuries on my premises?

Solution:

Probably not. This policy excludes employee injury and a temporary worker qualifies as an employee unless the activities of that worker fall within the following exception of a “temporary worker.”

“Temporary worker means a person who is furnished to a party to substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions.”

Do not rely on this exception. “Seasonal” and “Short Term” are not defined, and most temporary workers are more permanent than temporary, from a practical standpoint.

Long-term leased employees which are part of a co-employer arrangement from a PEO (professional employer organization) are different than the temporary worker contemplated by this Special Report.
WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

ALTERNATE EMPLOYER ENDORSEMENT

This endorsement applies only with respect to bodily injury to your employees while in the course of special or temporary employment by the alternate employer in the state named in Item 2 of the Schedule. Part One (Workers Compensation Insurance) and Part Two (Employers Liability Insurance) will apply as though the alternate employer is insured. If an entry is shown in Item 3 of the Schedule the insurance afforded by this endorsement applies only to work you perform under the contract or at the project named in the Schedule.

Under Part One (Workers Compensation insurance) we will reimburse the alternate employer for the benefits required by the workers compensation law if we are not permitted to pay the benefits directly to the persons entitled to them.

The insurance afforded by this endorsement is not intended to satisfy the alternate employer’s duty to secure its obligations under the workers compensation law. We will not file evidence of this insurance on behalf of the alternate employer with any government agency.

We will not ask any other insurer of the alternate employer to share with us a loss covered by this endorsement.

Premium will be charged for your employees while in the course of special or temporary employment by the alternate employer.

The policy may be canceled according to its terms without sending notice to the alternate employer.

Part Four (Your Duties If Injury Occurs) applies to you and the alternate employer. The alternate employer will recognize our right to defend under Parts One and Two and our right to inspect under Part Six.

Schedule

1. Alternate Employer
   Address

2. State of Special or Temporary Employment

3. Contract or Project

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

<table>
<thead>
<tr>
<th>Endorsement Insured</th>
<th>Effective Policy No.</th>
<th>Endorsement No. Premium</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insurance Company</td>
<td></td>
<td>Countersigned by</td>
</tr>
</tbody>
</table>

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule
AGREEMENT

This Agreement is made between the TEMPORARY EMPLOYMENT AGENCY indicated on Page 2 (hereafter “TEA”) and the RECIPIENT ORGANIZATION indicated on Page 2 (RO) and is attached to and incorporated into the Agreement for supplying temporary workers between these parties dated the ____ day of _____________________, 20_____.

INDEMNIFICATION AGREEMENT AND INSURANCE REQUIREMENTS

I. Certificates of Insurance

   A. **TEA**, before providing assigned workers to **RO**, shall provide a certificate of insurance to **RO**. The Certificate of Insurance shall provide evidence that the insurance requirements contained herein are satisfied in their entirety.

   B. The certificate shall also provide that at least 30 days prior notice of cancellation or material change shall be provided to **RO**.

   C. In addition, **TEA** shall provide a complete and true copy of any of the Alternate Employer, Waiver of Subrogation and Notice of Cancellation endorsements required by this Agreement to **RO**.

II. Minimum insurance requirements which shall apply to **TEA** each of which shall be placed through an insurer rated “A” or better by A.M. Best & Company.

   A. Workers’ Compensation and Employers Liability coverage covering the statutory requirements of the State of Michigan where the work is being done and insuring **TEA**.

      1) This policy shall contain a waiver of subrogation in favor of **RO**.

      2) An Alternate Employer endorsement scheduling **RO** as an Alternate Employer shall be added.

      3) Employers Liability coverage will have at least a $1,000,000 limit.

      4) An endorsement requiring at least thirty (30) days prior written notice of cancellation to **RO**.

   B. Employment practices liability covering the wrongful acts of **TEA**.

      1) The limit of liability shall be at a minimum $1,000,000.
III. Agreement to defend, indemnify and hold harmless

A. **TEA** agrees to indemnify and defend, including reasonable attorneys fees and hold harmless **RO** for the failure of **TEA** to maintain insurance as required in this Agreement.

B. **TEA** agrees to hold harmless **RO** for any claims made against **RO** as a result of **TEA** wrongful acts relating to its discipline, demotion, dismissal, discharge, failure to employ, breach of employment contract, discrimination, libel, slander, retaliation, violation of any federal, state, or local civil rights laws, sexual or other workplace harassment of any kind.

Agreed to this __________ day of ____________________________, 20_______

**TEA:** _____________________________________________________________

Name of Temporary Employee Agency (TEA)

By: ________________________________________________________________

(TEA’s Authorized Officer)

**RO:** _____________________________________________________________

Name of Recipient Organization (RO)

By: ________________________________________________________________

(RO’s Authorized Officer)
ACKNOWLEDGEMENT OF STATUS AND HOLD HARMLESS

I, the undersigned, an employee of the TEMPORARY EMPLOYMENT AGENCY indicated on Page 2 (hereafter “TEA”), agree to accept a temporary work assignment at the premises operated by the RECIPIENT ORGANIZATION (hereafter “RO”) indicated on Page 2. As a condition of my assignment, I acknowledge the following:

1. I am an employee of the TEA and not of RO. I am neither covered by, nor do I have rights in, personnel policies, procedures and practices established by RO for its permanent employees.

2. I may not participate in any benefit plan, fringe benefit or pay practice that RO has or may hereafter establish for its permanent employees.

3. The TEA will make payment to me directly for services rendered and withhold taxes from my pay.

4. Only the TEA may address any questions or problems I might have about my compensation and benefits.

5. I will direct any problems or complaints I may have regarding the terms of my assignment to the TEA.

6. In the event I am injured as a result of this work assignment, in consideration of my assignment to RO I will look only to the TEA for payment of medical bills, loss of wages or other damages sustained by me or my family, and agree to hold RO and its officers, directors and supervisors harmless from any such claims.

7. I understand this is a temporary assignment that will continue or not continue solely at the discretion of RO, and I agree to hold RO harmless from any claims arising out of the discontinuance of this assignment for any reason.

8. This “Acknowledgement of Status and Hold Harmless” will not constitute, or be construed as, an employment contract between RO and me.

9. The terms of this “Acknowledgement of Status” may not be amended except in writing and signed by an authorized representative of RO. Verbal understandings have no effect. This Acknowledgement of Status constitutes the full and complete understanding between RO and me, and supersedes any and all prior oral or written understandings between us, with respect to the subject matter herein.
10. I agree that RO, whenever stated in this Agreement, includes all related entities owned by or controlled by RO:

Agreed to this ___________ day of ____________________________, 20_______

TEA: _____________________________________________________________
Name of Temporary Employee Agency (TEA)
By: _____________________________________________________________
(TEA’s Authorized Officer)

RO: _____________________________________________________________
Name of Recipient Organization (RO)
By: _____________________________________________________________
(RO’s Authorized Officer)