

# Temps & Seasonal Employees: Who's Liable If They Get Injured?



## SITUATION

A grocery store temp drove a forklift off the edge of a lifting dock and broke his ankle. The temp wasn't trained to drive the device or supervised by somebody who was.

## QUESTION

Who was held liable for the temp's injuries—the grocery store or the temporary employment agency that placed him there?

## ANSWER

The Ontario Ministry of Labour laid charges against the grocery store for failing to ensure that the forklift was operated by a competent person or a worker accompanied by a competent person. Result: \$75,000 fine [*LOEB Canada Inc.*].

## THE MORAL

Companies that hire temps , i.e., "host employers," and not temporary employment agencies are generally responsible for work-related injuries that temps suffer.

## EXPLANATION

Host employers are liable because they control the workplace and how the work is performed. With control comes responsibility for ensuring that the work is performed safely and in compliance with OHS laws by employees who have proper training and supervision. The grocery store in *Loeb* got into trouble because it allowed an untrained temp to drive a forklift. Although the *Loeb* case involved a temp from an agency, the same principles apply to seasonal employees.

## **EXCEPTION**

Under OHS laws, host employers may be able to delegate responsibility for safety and compliance in connection with certain work to another employer like a general contractor that's in control of the work done at the host employer's workplace. The contractor given this responsibility is called the "prime contractor."

## **TEMP AGENCY'S SAFETY RESPONSIBILITIES**

Because temp agencies aren't on the site, they can't serve as prime contractors. But agencies are generally responsible for ensuring that their temps get appropriate health and safety information and training from somebody at the time they're initially placed in the workplace.