

INFORMATION MEMORANDUM: 84-X-67

TO: All OSH Directors, Supervisors and Field Personnel

FROM: William M. Lybrand, Director of OSH

SUBJECT: Leased Employees

DATE: May 7, 1984

PURPOSE

This memorandum clarifies South Carolina Department of Labor, Division of Occupational Safety and Health's position on leased employees.

BACKGROUND

The South Carolina Supreme Court has held that the existence of an employer's control is the most important element of the employee/employer relationship. The court will consider four elements in deciding whether or not there is an employee/employer relationship. The four elements are:

- a. The method of payment, being the least important;
- b. Direct evidence of the right to or the exercise of control of the work which is of critical importance;
- c. The furnishing of equipment, also of critical importance; and
- d. The right to terminate employment (fire) which is the most important element.

INTERPRETATION

In questionable cases, the OSH Division shall review the above four (4) factors to determine who is responsible for a worker on a jobsite. Where the work being performed is a part of the general trade, business or occupation of the owner, the owner will probably be the employer for purposes of the OSH Act due to his exercise of control, furnishing of equipment, and right to terminate employment (fire). This is essentially the Manpower and Kelley Girl situation. Where the task is non-recurring or extraordinary, or requires specialized equipment or expertise from the worker otherwise not available to the owner, the lessee would be the employer for OSH purposes. As an example, many construction jobs include leased cranes with leased operators. The general contractor exercises no control over the work of the crane operator other than to layout for him the task to be completed. The operator furnishes his own specialized equipment and controls

his own method of work. The owner of the crane retains the right to terminate the crane operator.

Each case involving a leased employee must be handled on its own facts. The evidence necessary to make the determination is the evidence necessary to establish the four (4) key elements set forth above in the "BACKGROUND" section of this memorandum.

EFFECTIVE DATE:

This memorandum is effective upon receipt and will remain in effect until cancelled or superseded.