OSHA Places Responsibility Squarely On General Contractors

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With regard to the primary responsibility for implementation of the Job Site Safety Program, OSHA is clear.

For decades, both industry authorities and government authorities have been in agreement with regard to the steps that a general contractor should take in order to ensure that work performed on their behalf is done safely and in compliance with the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA). OSHA recognizes the need for the general contractor to take reasonable steps to ensure that their work is done safely and in compliance with their regulations by contractor and subcontractor workers. OSHA requires that all employers, general contractors, contractors and subcontractors employ OSHA-competent personnel to perform safety inspections as part of their safety program. On Aug. 31, 1995, OSHA gave clarification regarding Section 1926.32 addressing competent persons at construction sites. The following is excerpted from that interpretation:

A legal principle relevant is that … the general contractor normally has responsibility to assure that the other contractors fulfill their obligations with respect to employee safety which affect the entire site. The general contractor is well suited to obtain abatement of hazards, either through its own resources or through its supervisory roll with respect to other contractors. It is therefore reasonable to expect the general contractor to assure compliance with the standards insofar as all employees on the site are affected. *Thus, we will hold the general contractor responsible for violations as could reasonably be expected to prevent or abate by reason of its superior capacity.*

On the other hand, the Occupational Safety and Health Review Commission also noted that the duty imposed on a general contractor is a reasonable one, and that the general contractor will not be held liable for violations which it could not reasonably be expected to detect or prevent. In addition to whatever responsibility it may have as an exposing employer, the general contractor would also share responsibility for those violations by its subcontractors which it could reasonably have detected and have corrected. OSHA expects general contractors to take the steps necessary to satisfy themselves that subcontractors engage the involvement of competent persons, as well as a general inspection obligation.

In February of 2009, the United States Court of Appeals for the Eighth Circuit upheld OSHA's right to cite general contractors as controlling employers responsible for compliance with OSHA standards, even though their own workers are not exposed to the hazard. *Hilda Solis, Secretary of Labor, United States Department of Labor v. Summit Contractors*, 558 F.3d 815(8th Cir. 2009).

OSHA Regulations 1926.16 (A-D) set forth a philosophy of safety management. This philosophy of safety management guides OSHA's multi-employer citation policy which considers four types of employers: The Creating Employer, The Exposing Employer, The Correcting Employer, and The Controlling Employer. When there is a violation of a particular standard related to a particular hazard, OSHA is required to issue allegations of violations to entities that meet the definition of the four types of employers, expressed in OSHA's multi-employer citation policy. OSHA's multi-employer citation policy requires The Controlling Employer to exercise reasonable care to prevent and detect violations of OSHA standards. Reasonable care is defined. The Controlling Employer must conduct periodic inspections of appropriate frequency, implement an effective system for promptly correcting hazards, and enforce the other employers' compliance with safety and health requirements with an effective, graduated system of enforcement and follow-up inspections.

With regard to the primary responsibility for implementation of the Job Site Safety Program, OSHA is clear in its basic instructor course for occupational safety and health standards in the construction industry. OSHA states the following:

General Contractor has primary responsibility. The federal safety and health laws now place the primary responsibility for the environmental safety of all personnel on the job squarely on the primary employer, the General Contractor. He cannot contract away this responsibility. He must, therefore, insist that the subcontractors become a part of the planning, as well as the execution of the job. The fact is that every employer on the construction site is responsible for the safety of his own employees and for the safety of any and all subcontractors working for him. *There is no way, under the Acts, that this responsibility can be contracted away for it is the responsibility under the Law and not under the Contract.*

These safety standards on a construction job site are applicable to plaintiffs who are injured on a commercial construction site. A factual example of a case we are presently litigating illustrates their applicability. Our office represents a gentleman who was operating a cement mixer. Prior to this incident, he poured four buckets of water into a cement mixing machine, as well as cement. The machine had been rocking when the barrel spins. Water would splash out. The shaking of the barrel was caused by a two-by-four that was propped in a way to cause vibration. Water splashed out of the mixer and hit the plaintiff in the head, face, eyes, hair and clothing. There was no clean water available for him to rinse out his eyes and wash himself off. He was never provided with any safety goggles by either his employer or the general contractor, and there were no OSHA-competent personnel at the site. As a result, the plaintiff ultimately, after several operations, became blind in one eye.

At the time of the incident, the plaintiff was exposed to contact with cement. The risk of eye injury from being splashed with liquid cement was increased because of two significant risk factors. The first is that he was not wearing proper eye protection, and the second is that there was no water available and he was not provided with any safety goggles. OSHA requires that workers be provided with appropriate personal protective equipment. In our case, the plaintiff was not provided with such equipment. It is our contention and allegation in this pending litigation that the general contractor failed to plan, monitor and ensure that the plaintiff was provided with appropriate goggles. We contend that the general contractor should have known that he was not provided with appropriate personal protective equipment and was working in violation of OSHA's standards long before the day of this incident. Simply put, it is our contention in this litigation that the general contractor and subcontractors on the site violated OSHA and other standards, in that workers should be provided with appropriate eye protection and must have available water to wash off any contact of cement that

occurs while working.

Familiarity with OSHA and its requirements is essential when litigating injuries arising from commercial construction accidents.

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