



General Contractors Have A Tremendous Responsibility

The Occupational Safety and Health Act has for many years held general contractors responsible for their sub-contractors' safety violations, regardless of the general contractor's level of control over the subcontractor.

In 1994, OSHA released its Field Inspection Reference Manual ("FIRM"), setting forth an official stance on the issuance of citations to ANY jobsite employer "creating, controlling and correcting employees," regardless of whose employees were exposed to the workplace hazard. The "Multi-Employer Workplace Policy" as this doctrine has become known as remains active today, in various enforcement and continues to cause financial stress on those jobsite employers who fail to recognize their duties and obligations as it relates to safety enforcement and hazard elimination.

A "controlling contractor" in OSHA's view is one who, "has supervisory control over the worksite, including the power to correct safety violations itself or require others to correct them; Control can be established by contract or in the absence of...contractual provisions, by the exercise of control in practice." While some employers or general contractors may have seen a little relief due to the court ruling in *Secretary of Labor v. Summit Contractors, Inc.*, liability still exists under the following schemes and additional circumstances, as announced by the 8th Circuit Court of Appeals, two years following the original *Summit* opinion:

- **General Contractors can Still be Cited as Creating, Correcting, or Exposing Employers**

As defined by OSHA:

- A creating employer - is one who actually creates the hazard;
- A correcting employer - is one who has the responsibility for actually correcting the hazard;
- An exposing employer - is one whose own employees are exposed to the hazard

If the general contractor can be classified as creating, correcting, or exposing employers, it may still be cited for safety violations. The more active a role that a general contractor takes in a subcontractor's work, the more likely the general contractor is to fall within one of the above categories.

- **General Contractors may Still be Cited if Subcontractors are Considered Employees**

The argument basis against liability is that how can general contractors responsible for other's employees. Thus, if a subcontractor can be considered an employee of the general

contractor, the general contractor may still be cited for the subcontractor's safety violations. Courts look past labels and analyze the nature of the relationship itself. If one party controls and directs the means by which the other party performs work, courts will generally consider it an employer-employee relationship...regardless of the label attached by the parties.

- General Contractors Still Face Litigation and Tort Liability...Regardless of OSHA fine risk

OSHA is intended to prevent workplace accidents rather than to compensate those who are involved in accidents. Injured workers may still sue any contractor involved in a project. The fact that a general contractor is not liable under OSHA does not mean that it will not be liable in a lawsuit, as the scope of the contractor's duty under tort law is greater. Once attorney's fees, damages, pain and suffering, etc. are added up...the potential financial risk is worth general contractors ensuring a safe worksite, regardless of whether OSHA can properly issue citations for others misdeeds.

- What Should General Contractors Do?

OSHA expects general contractors, or “controlling employers,” to exercise *reasonable care* to prevent and detect violations on the site. To demonstrate reasonable care, general contractors should establish a subcontractor safety program to protect all employees, equipment, and facilities from injury, accident and loss. As a condition of doing business, all subcontractors must comply with this program, as well as applicable local, state, and federal safety and health regulations. In addition, general contractors need to:

- Ensure contracts contain appropriate information concerning the subcontractor safety program.
- Provide subcontractors with access to MSDS materials and any additional site specific safety information.
- Monitor subcontractor activities by conducting periodic inspections to ensure all work is performed in a safe manner.
- Implement an effective system for promptly reporting and correcting hazards.
- Enforce the subcontractor safety program by instituting a firm and consistent progressive discipline policy.

General contractors have a tremendous amount of responsibility when it comes to the safety and health of the workers under their watch. Remember that safety does not occur by chance. It is the result of extensive planning, thorough training, clear communication, effective execution, and consistent enforcement.

Article by: Cara Mia Londino, Esq., Human Resources Manager & Mark Komosinski, Safety Consultant