



### **OSHA Action Spotlights Employer Risk**

A ruling in favor of OSHA in an Illinois federal courtroom earlier this year highlights a potential problem for employers in every state.

Briefly, two employees of an Illinois employer were killed and a third injured in an industrial accident. OSHA investigated, and concluded from initial findings the employees did not receive safety training and the employer did not provide safety equipment. To continue its investigation, OSHA then subpoenaed the employer's workers compensation insurance company for records and inspection documents in an effort to obtain more information. The employer objected but was overruled in court.

In fact, OSHA has always had the ability to subpoena such records. Communications between an insurance company and a policyholder are not confidential or protected information. The problem for employers is that they routinely allow insurance companies onto their premises for loss prevention services and safety inspections without ever considering that information in the resulting reports could be used against them in the future.

It's a Catch-22. Loss prevention engineers and safety consultants are an important resource for any employer seeking to control and minimize work related injuries and claim costs. However, every time a safety consultant writes a report, a document has been created; an inspection report that notes deficiencies can come back to hurt an employer in the future if not properly addressed.

Employers should certainly continue to rely on insurance company resources to control workers compensation costs, but you can't just put any reports or communications received from engineers or insurance companies in a drawer and forget about them. If a report makes recommendations, you must document your response. If you comply with a recommendation, it should be noted; if a recommendation is unrealistic or unworkable, some form of compromise response should be discussed with the insurer, and documented. In every case you need to remember that any time you get a report from an insurance company that report, and your responses, creates a paper trail that could resurface in the future and potentially be used against you.

Here's the rest of the story: after the subsequent investigation, and based in part on the information uncovered from the subpoenaed inspection records, OSHA issued 25 citations and fined the employer \$555,000.