

Occupational Safety & Health Review Commission Provides Guideposts For Avoiding “Controlling” Employer Liability On Multi-Employer Worksite

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Under the Occupational Safety & Health Administration’s (OSHA) 1999 Multi-Employer Citation Policy, general contractors, construction companies, and other “host” employers can face liability for accidents involving contractors, subcontractors or employees of other entities on the basis of being the so-called “controlling employer.”

Generally, OSHA has relied on this doctrine to issue citations to any employer that may have had a role in an accident, without a serious consideration as to which employer may truly have been at fault.

In a recent case, the Occupational Safety & Health Review Commission (Commission) took OSHA to task for its “scattershot approach” to issuing the citation, specifically noting that the host employer that was cited had a rigorous safety program in place and selected subcontractors with good safety records.

In particular, the Commission held that OSHA could not require that the host employer inspect its worksite to confirm whether an employee of a contractor was using appropriate fall protection, within a matter of hours after starting the job, when among other things, the contractor had been required to conduct its own job safety analysis of the area.

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Based on this decision, controlling employers should recognize that their overall safety programs may help reduce the risk of OSHA liability in the event of an accident. Employers should carefully assess their agreements with subcontractors or other independent service providers to make sure that these entities are protecting their employees.

In addition, contractors, subcontractors and service providers should also recognize that this decision may further encourage general contractors and host employers to carefully assess the safety records of other employers who are invited onto job sites.