

Greater Hamilton Safety Council 2014 “OSHA’s Multi-Employer Work Site Policy”

Cincinnati Area OSHA

Steve Medlock

An up to the moment look into OSHA Multi-Employer Work Site Policy

- ▣ -Multi-employer Worksite Policy ([CPL 02-00-124](#))
- ▣ -Multi-employer Worksites
- ▣ -Multi-employer worksites four basic categories:
 - Controlling
 - Creating
 - Correcting
 - Exposing
- ▣ -Process followed in determining employer's responsibilities
- ▣ -Liability of Controlling Employers

OSHA Multi-Employer Citation Policy

- ▣ CPL 2-0.124 (Appendix A of manual)
- ▣ Clarifies responsibilities of employers
- ▣ More than one employer may be citable
 - Two-step process to determine
- ▣ How long will this be enforcement policy?
 - OSHRC decision has called the policy into question.

TWO-STEP PROCESS

1. What category of employer?

Creating

Exposing

Correcting

Controlling

(Multiple roles possible)

2. Did employer meet obligations for that category?

Creating Employer

1. The employer that caused a hazardous condition that violates an OSHA standard”
2. Must not create violations / hazards.
 - Citable even if only employees of other employers are exposed

Creating Employer Example

- ▣ Example 2: Employer M hoists materials onto Floor 8, damaging perimeter guardrails. Neither its own employees nor employees of other employers are exposed to the hazard. It takes effective steps to keep all employees, including those of other employers, away from the unprotected edge and informs the controlling employer of the problem. Employer M lacks authority to fix the guardrails itself.

Creating Employer Example

▣ **Analysis: Step 1:** Employer M is a creating employer because it caused a hazardous condition by damaging the guardrails. **Step 2:** While it lacked the authority to fix the guardrails, it took immediate and effective steps to keep all employees away from the hazard and notified the controlling employer of the hazard. Employer M is not citable since it took effective measures to prevent employee exposure to the fall hazard.

Exposing Employer

1. An employer whose own employees are exposed to the hazard.”
 - Even if they created the hazard.
2. If not the creating employer, citable if:
 - Knew hazard, or would have with reasonable diligence **and**
 - Failed to take steps to protect employees.

Exposing Employer

- ▣ If exposing employer does not have authority to correct hazard, must:
 - Ask creating or controlling employer to correct
 - Inform employees of hazard
 - Take reasonable alternative protective measures
- ▣ Imminent danger? Remove employees!

Exposing Employer Example

- ▣ **Example 3:** Employer Sub S is responsible for inspecting and cleaning a work area in Plant P around a large, permanent hole at the end of each day. An OSHA standard requires guardrails. There are no guardrails around the hole and Sub S employees do not use personal fall protection, although it would be feasible to do so. Sub S has no authority to install guardrails. However, it did ask Employer P, which operates the plant, to install them. P refused to install guardrails.

Exposing Employer Example

▣ **Analysis: Step 1:** Sub S is an exposing employer because its employees are exposed to the fall hazard. **Step 2:** While Sub S has no authority to install guardrails, it is required to comply with OSHA requirements to the extent feasible. It must take steps to protect its employees and ask the employer that controls the hazard - Employer P - to correct it. Although Sub S asked for guardrails, since the hazard was not corrected, Sub S was responsible for taking reasonable alternative protective steps, such as providing personal fall protection. Because that was not done, Sub S is citable for the violation.



Correcting Employer

1. Common undertaking, same worksite as exposing employer **and**
Responsible for correcting a hazard
2. Must exercise reasonable care in
 - Preventing and discovering violations
 - Meeting obligation to correct hazard

Correcting Employer Example

▣ **Example 5:** Employer C, a carpentry contractor, is hired to erect and maintain guardrails throughout a large, 15-story project. Work is proceeding on all floors. C inspects all floors in the morning and again in the afternoon each day. It also inspects areas where material is delivered to the perimeter once the material vendor is finished delivering material to that area. Other subcontractors are required to report damaged/missing guardrails to the general contractor, who forwards those reports to C. C repairs damaged guardrails immediately after finding them and immediately after they are reported. On this project few instances of damaged guardrails have occurred other than where material has been delivered. Shortly after the afternoon inspection of Floor 6, workers moving equipment accidentally damage a guardrail in one area. No one tells C of the damage and C has not seen it. An OSHA inspection occurs at the beginning of the next day, prior to the morning inspection of Floor 6. None of C's own employees are exposed to the hazard, but other employees are exposed.

Correcting Employer Example

- ▣ **Analysis: Step 1:** C is a correcting employer since it is responsible for erecting and maintaining fall protection equipment. **Step 2:** The steps C implemented to discover and correct damaged guardrails were reasonable in light of the amount of activity and size of the project. It exercised reasonable care in preventing and discovering violations; it is not citable for the damaged guardrail since it could not reasonably have known of the violation.

Controlling Employer

1. General supervisory authority
 - Power to correct or require others
 - By contract or in practice
2. Reasonable care to prevent & detect
 - Lesser extent than for own employees
 - Less frequent inspections
 - Less knowledge of trade standards

Controlling Employer

- ▣ Factors on how often to inspect:
 - Project scale
 - Nature/pace of work, changing hazards
 - How much known about subcontractor
 - More frequent inspections for unknown or previously non-compliant subcontractor
 - Less frequent inspections for subcontractor with strong safety and health efforts

Controlling Employer

- ▣ Types of Controlling Employer:
 - Established by Contract
 - Combination of Contract Rights
 - ▣ Dispute resolution, schedules, sequencing
 - Architects / Engineers, as above
 - Control without Explicit Contractual Authority

Controlling Employer Example

□ **Example 6:** Employer GH contracts with Employer S to do sandblasting at GH's plant. Some of the work is regularly scheduled maintenance and so is general industry work; other parts of the project involve new work and are considered construction. Respiratory protection is required. Further, the contract explicitly requires S to comply with safety and health requirements. Under the contract GH has the right to take various actions against S for failing to meet contract requirements, including the right to have non-compliance corrected by using other workers and back-charging for that work. S is one of two employers under contract with GH at the work site, where a total of five employees work. All work is done within an existing building. The number and types of hazards involved in S's work do not significantly change as the work progresses. Further, GH has worked with S over the course of several years. S provides periodic and other safety and health training and uses a graduated system of enforcement of safety and health rules. S has consistently had a high level of compliance at its previous jobs and at this site. GH monitors S by a combination of weekly inspections, telephone discussions and a weekly review of S's own inspection reports. GH has a system of graduated enforcement that it has applied to S for the few safety and health violations that had been committed by S in the past few years. Further, due to respirator equipment problems S violates respiratory protection requirements two days before GH's next scheduled inspection of S. The next day there is an OSHA inspection. There is no notation of the equipment problems in S's inspection reports to GH and S made no mention of it in its telephone discussions.

Controlling Employer Example

▣ **Analysis: Step 1:** GH is a controlling employer because it has general supervisory authority over the worksite, including contractual authority to correct safety and health violations. **Step 2:** GH has taken reasonable steps to try to make sure that S meets safety and health requirements. Its inspection frequency is appropriate in light of the low number of workers at the site, lack of significant changes in the nature of the work and types of hazards involved, GH's knowledge of S's history of compliance and its effective safety and health efforts on this job. GH has exercised reasonable care and is not citable for this condition.

Multiple Roles

- ▣ May be an exposing employer in combination with other roles
- ▣ May be a correcting employer if authorized to correct hazard

OSHA Regulations with Rules for Multiple Employers

- ▣ Specific rules in:
 - Hazard communication 1910.1200
 - Lockout/tagout 1910.147
 - Permit-required confined spaces 1910.146
 - Process safety management 1910.119
 - Frequent and Regular Inspections 1926.20(b)(2)
 - Site Layout 1926.752
 - GFCI's, Stairways, Unprotected Sides or Edges 1926

- ▣ Citation policy applicable to all hazards

Civil Liability

- ▣ Worker's compensation only covers employee-employer relationship
- ▣ Subcontractor employees may sue general contractor
- ▣ Prevention:
 - Reasonable care to prevent/correct hazard
 - Coordination with other employers
 - Contract terms / practices with contractors

Civil Liability Subcontractors

- ▣ Contracts and Contract Language are Critical.
- ▣ When you can use a General Contractor to hire subcontractors and control work.
- ▣ Consider Legal Assistance on amount of Control you want to be responsible for.
- ▣ Watch out for Sub's to a Sub
 - Lack of workers compensation or insurance

Keys to Success

- ▣ Step 1 Determine if you are a creating, exposing, correcting or controlling employer.

- ▣ Step 2 If so do the following:
 - Be competent in the subject matter (Training)
 - Have (S/H)Rules covering applicable hazards
 - Provide equipment necessary to do job safely
 - Monitor area of concern (Inspection)
 - Take actions necessary to inform and correct.
 - Document actions
 - Discipline
 - If it appears to be imminent danger remove exposed workers

If you have questions seek guidance on steps needed for appropriate actions.

Any Questions