

Is subcontractor safety any of your business?

In a nutshell, YES! In a recent decision, the U.S. Court of Appeals for the Eighth Circuit reversed a ruling by the Occupational Safety and Health Review Commission (OSHRC) and upheld OSHA's policy of citing general contractors for their subcontractors' safety violations. What does this mean to you? The policy effectively makes general contractors responsible for ensuring a violation-free worksite for *all* employees, not just their own.

Working without a net

Summit Contractors was the general contractor for construction of a college dormitory in Little Rock, Ark. The firm subcontracted the entire project, so its only employees on the job site were a project superintendent and three assistant superintendents.

On several occasions, Summit's project superintendent observed employees of All Phase Construction (the exterior brick masonry subcontractor) working on a scaffold without guardrails or personal fall protection. The superintendent advised All Phase to correct the problems, but when its employees moved the scaffold to another location, they continued to work without guardrails or fall protection.

Eventually, an OSHA officer observed the violations and issued a citation to Summit based on the "controlling employer" policy. In other words, even though none of Summit's employees were exposed to the hazard, as a controlling employer Summit was liable for the All Phase employees' violations of OSHA standards.

Summit contested the citation and the OSHRC ruled in its favor, finding that OSHA regulations require employers to protect only their own employees. But, when it went to court, the Eighth Circuit disagreed, concluding that the controlling employer policy was consistent with the language of the regulations and deferring to OSHA's interpretation.

What you should do

Although the Summit case is binding only in the states that make up the Eighth Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota), it's likely that OSHA will continue to enforce its controlling employer citation policy outside the Eighth Circuit. It remains to be seen, however, whether the OSHRC will acquiesce in the court's decision outside the Eighth Circuit and, if it doesn't, how other circuits will rule on the issue.

General contractors in all states, including states outside the Eighth Circuit, should carefully review their subcontractors' safety records and monitor their activities on construction sites. It may also be a good idea to consult an attorney about modifying construction contracts to require subcontractors to comply with OSHA safety requirements as well as the general contractor's safety plan, and to impose penalties if they don't comply.

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