

Virginia Multi-Employer Site Safety Issues--and How to Deal with Them

The world of the Owner, Contractor, Subcontractor “straight line” project model is long gone. Increasingly complex construction needs for commercial owners require the services of numerous trades, and even multiple “prime” contractors at times, to perform the various stages of construction.

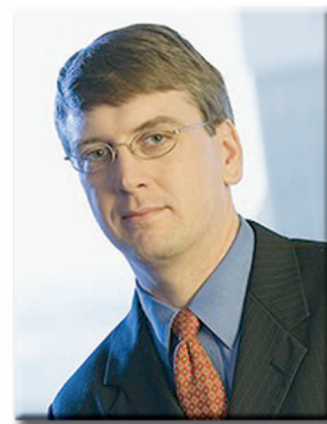
Because of the complex and multi-employer nature of the modern commercial worksite, as a contractor, you are no longer responsible only for the safety of your own employees. You no longer can absolve yourself from a Virginia Occupational Safety and Health (“VOSH”) citation with a defense that you did not create the hazard.

In fact, under VOSH regulations, the following four categories of employer can be cited because of the *same unsafe condition*:

1. The “Creating Employer” who actually created the hazard,
2. The “Controlling Employer” who has responsibility over the site and has authority to require correction of unsafe conditions for the entire site or the specific area of the site at which the VOSH inspector finds the hazard,
3. The “Correcting Employer” who is responsible for the correction of any hazard, and
4. The “Exposing Employer” who exposes its employees to a hazard whether created by it or not.

VOSH does provide you a limited defense should you be an “Exposing Employer” (though not the other three categories of employer) if you can meet all parts of a seven part test:

1. You did not create the hazard,
2. You did not have the responsibility or the authority to have the hazard corrected,
3. You did not have the ability to correct or remove the hazard,
4. You can demonstrate that the creating, the controlling and/or the correcting employers, as appropriate, have been specifically notified of the hazards to which your employees were exposed,
5. You have instructed your employees to recognize the hazard and, where necessary, informed them how to avoid the dangers associated with it;
6. Where feasible, you must have taken appropriate alternative means of protecting employees from the hazard, and
7. When extreme circumstances justify it, you have removed your employees from the job site.



In practical terms, this means that, as a Virginia general contractor, construction manager, or large subcontractor with supervisory authority over other trades on a construction site, you can be held accountable for a safety violation caused by other employers over which you have supervision, by contract or otherwise. Under certain circumstances even an architect or engineer can be cited as a “Controlling Employer.” Therefore, you must exercise reasonable care to assure that the site under your control complies with VOSH standards and do what is prudent to assure job site safety.

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As a subcontractor there are a few things that you can do to minimize the possibility of a citation for the actions of others. First and most obviously, assure that your work is performed safely and that you do nothing that would cause a hazard for either your employees or those of other trades working in the same area of the site.

Second, make sure that you know what trades are working in the same site area where your work is being performed and inform those trades of what safety measures need to remain in place even when your personnel are not present. Also, if informal communication does not cause the employees of others to follow safety measures implemented by you, a written communication to the general contractor or other controlling employer(s), coupled with a diligent effort to correct situations caused by others, will go a long way toward avoiding, or at the very least minimizing, a citation.

Third, should your personnel need to work around a hazard that is in violation of the VOSH standards, do what you can to correct the situation and reduce employee exposure to the hazard and notify the appropriate controlling employer to correct the situation. As a last resort, and if the situation is not corrected through other methods,

DISCLAIMER

This newsletter is not intended to be an exhaustive explanation of every aspect of the law on this subject nor is it intended as legal advice. You should consult an attorney for specific advice.

remove your employees from the site and inform the general contractor why, both verbally and in writing.

Fourth, assure that you have documented your efforts to remain in compliance. Such documentation could be the difference between an overturned citation and an enforced one.

All of these measures should help when a VOSH inspector arrives at your work site and observes a hazard to which the multi-employer rules to apply. Should a citation occur in spite of your well documented efforts and you feel that you were wrongly cited, you must file a notice of contest within fifteen (15) days, or you will lose your contest rights.

In conclusion, the multi-employer worksite rules of the Virginia safety authorities can be confusing and at times contradictory. However, following the practical advice in this newsletter and consultation with a knowledgeable attorney relating to your safety program can minimize your risk of citation. ■

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