

Question of the month: "I know of a few general contractors that enforce jobsite safety rules that are more strict than OSHA's. Do I play by their rules or OSHA's?"

It's Not Just OSHA, Folks

A dramatic recent settlement shows how sympathetic juries are swaying companies to settle safety lawsuits out of court, sometimes for huge sums of money.

It seems many companies would rather pay large settlements than take their chances in front of juries who may not believe companies and managers went far enough to protect workers.

Example: A construction management firm just agreed to pay a \$19 million settlement to an ironworker who was seriously injured after a 14-foot fall on the job. He was left a quadriplegic and now cannot even breathe without a ventilator.

The man sued the company, claiming it should have done more to protect him.

The kicker: the company was in compliance with OSHA standards for fall protection for ironworkers.

Compliance wasn't enough

Problem is, OSHA rules present a double standard which left this company in some serious hot water.

Federal OSHA requires fall protection for people working at heights above six feet, with the exception of those working in steel erection or scaffolding.

In fact, some ironworkers may work at heights up to 30 feet without fall protection.

In this case, a construction management company hired a safety consultant to evaluate its safety program.

The consultant recommended the company go above and beyond OSHA's rule and require fall protection for all people working at heights over six feet.

The company considered the advice but ultimately rejected it, likely because it seemed impractical when OSHA standards were already met.

This decision proved to be fateful after the ironworker fell off the structure on the site one day.

After three years of litigation, the company agreed to the massive settlement amount two weeks before the case would have gone to trial.

Juries: The wild card

Fact is, when cases like this go to trial, it doesn't matter if you followed the book or not. A visibly injured employee is tough to brush off in front of a jury without making your company seem completely callous.

OSHA compliance can be a good minimum standard, but ultimately you are the one who has to make sure people go home safely at the end of the day.

Is Your Company Liable For Supervisor's Safety Gaffe?

"So it looks like a citation for failure to use fall protection," OSHA Inspector Smith said as he closed the manila folder and took off his glasses.

"You're citing us \$18,000 for *that*?" Safety Manager Pete asked, incredulously. "It's not like our people are running around without fall protection equipment. What you saw was a two-second mistake on the part of one of our supervisors," Pete explained. "He just stepped out on the balcony to double-check something so he didn't harness up first. Believe me, we read him the riot act for it."

"A two-second mistake is two seconds too long if somebody gets hurt," Joe said as he gathered his things. "If I see it, I have to cite it."

Supervisor didn't think first

"This is clearly un-preventable employee misconduct," Pete said.

Joe stopped packing up his things. "How do you figure that?" he asked.

"We have safety rules for fall protection, which everyone knows about. Eddie has been with us for years, and he's one of our most reliable supervisors. He just got caught up in what he was doing and forgot the rules for a moment," Pete reasoned. "If the rules were as strict as you say they are, there's no way he should've been able to 'forget' them," Joe said as he resumed packing. "There's no way we could've known Eddie was going to slip up that day. We'll fight this citation!"

Did Pete's company win?

No, Pete's company lost. The citation was upheld upon appeal.

The company argued that it shouldn't be cited because the safety violation was due to unpreventable employee misconduct.

To prove employee misconduct, the company must be able to prove that it had safety rules to prevent the condition; the rules were communicated to employees; it had taken steps to discover violations; and that it enforced the rules when violations were found. But since it's the supervisor's job to keep other workers safe, this case was tougher to defend.

The court pointed out that because the supervisor felt free to casually breach a company safety rule, there was pretty strong evidence that *the* company-didn't do enough to enforce its own policies.

That meant the criteria for proving unpreventable employee misconduct couldn't be met.

Supervisors Must Lead By Example

Holding supervisors accountable for safety records in their areas can be a powerful incentive to make sure they're setting the right tone for safety.

The phrase, "Do as I say, not as I do," is likely to hold little water with employees - especially if they catch a supervisor taking safety shortcuts.

This case shows why it's critical to remind supervisors that the eyes of the workforce are on them all the time.