

## OSHA access to job site often touchy subject

When Nevada Occupational Safety & Health Administration officials come knocking, employers should know their rights and responsibilities, a lawyer told a group of contractors and other employers during a recent OSHA compliance seminar.

"OSHA doesn't have any right to just walk onto your job site any more than a cop does to walk into your house," Charles Keller, a Phoenix-based lawyer for Snell & Wilmer, said.

OSHA inspections can be triggered either by a complaint from an employee about a hazardous situation, a referral from some other source or a random choice, Tom Czehowski, chief administrative officer of Nevada OSHA, said. He said Nevada OSHA conducts about 2,900 inspections a year, about half of which were the result of a referral or a complaint.

When an inspection takes place it is important for the employer and its agents to act appropriately, Keller said.

Czehowski said employers are required to notify OSHA officials of any on-the-job fatalities and any injuries that caused three or more employees to be hospitalized. He said his office only investigates those injuries, illnesses or fatalities that occur in the workplace that involve violations of OSHA laws and regulations. Since July Nevada has had 64 on-the-job fatalities, while 26 cases were investigated by Nevada OSHA regulators because of the potential for OSHA violations.

In fiscal year 2004, which began July 2003 and ended June 2004, Nevada had 64 on-the-job fatalities, while 26 cases were investigated by Nevada OSHA regulators because they were potentially the result of an OSHA violation, Czehowski said. As of April 30 there have been 50 on-the-job deaths in fiscal year 2005, which began in July 2004. He said that not all of the on-the-job deaths are related to illnesses or injuries incurred at the work site because of a safety violation.

Keller said the officer must show a copy of the referral or complaint and must identify him or herself. He also said the compliance officer has an obligation to get permission from the employer to enter the jobsite. But that can be tricky in a construction setting, where there may be the owner of the property, the general contractor and subcontractors involved.

Keller said usually the general contractor is the company that should give consent to an OSHA compliance inspector who wants to enter the jobsite. He said an OSHA



Ironworkers Brian Plotezka, left, and Craig Humphries clean up a beam at the Schuff Steel Co. yard on Tuesday. The beam will be used in a temporary staircase during construction of the Palazzo.

Photo by Steve Marcus

inspector is only required to get consent from a person who identifies himself or herself as an owner's representative, operator or agent in charge.

"When you don't consent and you don't object the inspection is valid," Keller said. "(If) you did not object to the inspection, there was an implied consent."

He said employees of the subcontractors should know to refer OSHA officials to the general contractor's trailer to get consent. He said the general contractor should designate a representative to escort the OSHA inspector and that person should be polite and knowledgeable about the company's rights under the law.

Keller said that person should not give the OSHA inspector undue access to areas of the jobsite that OSHA is not entitled to during that inspection. OSHA compliance inspectors are able to access an entire jobsite if the search is random, however if an inspection was triggered by a complaint or referral the inspectors are limited to the area the complaint or the referral is focused on.

Lisa Barbee, safety engineer for Perini Building Co., agreed that it's important to educate employees about how to conduct themselves during an OSHA inspection.

"We ourselves teach our employees and subcontractors about how to conduct (themselves) in an investigation," Barbee said. "Less is better. Don't offer any information."

Barbee added that the company has a good relationship with OSHA inspectors. She said the inspectors are more focused on helping companies get into compliance rather than just penalizing them.

"The trend is changing toward education, I would say," Barbee said. "The relationship is so much better than it used to be. When Tom Czehowski took over he made some changes as to how the approach was."

Czehowski said the organization doesn't work to help companies or employees understand or comply with the law. He said as an enforcer of OSHA laws and regulations the organization is concerned with finding violations and issuing citations. He said the Nevada Safety Consultation & Training Section (SCATS) of the Nevada Division of Industrial Relations is the agency that helps Nevada's employers navigate and comply with OSHA laws.

Curtis Gonter, consultation supervisor for SCATS, said the agency's main goal through the Safety & Health Achievement Recognition Program (SHARP), is to help employers develop a safety and health management system to help increase production and reduce employee mistakes.

"The SHARP program is for employers that have higher than normal accident rates," Gonter said. "We will help that employer with their safety and health management system, which includes safety inspections, safety training to help them bring their accident rates (down)."

Sam Humble, chief of operations and general manager of Rockway Precast, said his company has utilized the SCATS program.

"We see them as a resource to depend on to get us in the right direction," Humble said. "It helps us ensure we have a safe workplace, which affects the bottom line. When you have a safer atmosphere, it decreases the amount of injuries and work accidents you have."