

Question of the month: I am a construction foreman and have found that I may be personally liable for safety violations on my jobsite. Is this true?

More on the “And the Beat Goes On”

First, an update on last month's article about proposed changes to the California Ergonomics rule (Title 8, Section 5110) and possible consequences to the construction industry. There is no news from the Advisory Committee working on proposed changes to the existing rule which some claim will have a devastating effect on the industry and the already wrecked Workers Compensation system but we have learned that State Fund, about the only WC carrier left standing, is looking for ergonomics professionals to cover San Francisco, Los Angeles, and Orange County. (\$43,812 – 63,852!) Suppose they know something?

The “Be a Manager and Go To Jail” law

As some of us may remember, part of the SB198 Cal/OSHA reform bill which was passed into law in 1991 added personal consequences to managers who do not comply with their employers' Illness and Injury Prevention Program. The controversy cooled down after a few years but the personal exposure to supervisors remained on the books. Then comes AB1127, the Workers Omnibus Health and Safety Act of 1999, which expanded the definition of just who in a company is responsible for workplace safety and with greatly increased penalties: *California Labor Code §6425(a): "Any employer and any employee having direction, management, control, or custody of any employment, place of employment, or of any other employee, who willfully violates any occupational safety or health standard, order, or special order, or Section 25910 of the Health and Safety Code, and that violation caused death to any employee, or caused permanent or prolonged impairment of the body of any employee, is guilty of a public offense...."*. That just about covers anyone in management at any level in the State. The fines and penalties can easily exceed the annual salary of any manager and penalties include incarceration. If you are interested in just how much or how long look up the original Chaptered AB1127 text that is archived at www.leginfo.ca.gov or call my office for an email copy.

Recent increases in Workers Compensation expense, often doubling yearly, and the consequences of the Multi-Employer Rule, which exposes project owners and general contractors to their subcontractor's Cal/OSHA fines and penalties, has greatly increased emphasis on safety in the construction industry in the last year or two. Local examples that come to mind are: fall protection gear must be worn for all work activities, including steel erection, over 7 ½ feet above grade on the San Diego Ball Park project (30 feet is allowed by Cal/OSHA in some cases); work platforms over four feet (the first jack of a masons scaffold – 10 feet is allowed) on the IDEC Pharmaceuticals project; and warm-up exercises required before starting work by a large, well known, contractor working in San Diego.

Extreme requirements? Four falls from heights have occurred on the Ballpark project to date. All four were arrested by fall protection gear! If zero workplace injuries is the goal, then the answer must be probably not.

A possible side effect of the increased focus on jobsite safety and the 1999 landmark AB 1127 is that a provision meant to bring more accountability to management is forcing forepersons and front-line supervisors to rethink whether their positions are worth the potential liability.

I am finding that some construction supervisors are balking at what they think is a new responsibility because they fear prosecution for safety and health violations if there is an on-the-job accident in which a worker is killed or seriously injured. And if both the company and the supervisor are prosecuted, the supervisor could be on his or her own for legal representation. An attorney representing the company couldn't also represent the supervisor.

But, in fact, there have been very few - less than one-handfull, actual supervisor or Safety Officer prosecutions in the State. This is not the case with business owners, however.

I see it as unlikely that Cal/OSHA will soften or rescind supervisor penalties for safety violations, especially those involving workers injuries, but a rethink of policies that attempt to induce compliance via the fear of jail time might be in order. How about reasonable Worker's Compensation premiums for companies with few claims or bid preference along with, or in lieu of, lowest bidder practices.

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