

WHO IS RESPONSIBLE FOR a SUBCONTRACTOR WORKERS DEATH?

General Contractor renovating their own building cited for subcontractor's fatality

Renovations to part of the company's building provided even more things to watch for Safety Manager Pete.

"I hope you get a new office out of all this mess," someone said in Pete's office doorway. It was company attorney John Jenkins.

"Afraid I'm stuck here in my old digs," Pete said. "What's up?"

"I hate to add more bad news after the death of a subcontractors worker, but I have to ask you some questions about how he fell from the scaffolding," John said. "We need to lay the groundwork to fight that OSHA citation for lack of a guardrail."

A Guardrail was removed and not replaced

"Did anyone know that those other workers would use the section of scaffolding that was out of service," John asked.

"Our foreman on the job asked the workers to clean up debris outside that part of the structure," Pete said. "No one asked them to go up on the scaffolding. They went up to pick up more debris on their own."

"Did our foreman know that the guardrail had been removed from the scaffold?" John asked.

"No," Pete replied. "The guardrail was removed by another contractor to set construction materials. They didn't put it back, and we didn't know that."

"If no one told the subcontractor's workers to go up there, and we didn't know the guardrail was missing, we can fight this," John said.

Was John able to get the OSHA citation thrown out?

Yes, an administrative law judge threw out the citation for lack of a guardrail on the scaffolding. The decision to dismiss the citation hinged on two things.

First, the company didn't know that the subcontractors workers would use the scaffold. The foreman gave instructions to clean up outside the building, not on the scaffold.

Second, the company didn't know that the guardrail was missing from the scaffold.

There was undisputed evidence that another subcontractor removed the guardrail because it needed to get some materials into that part of the building. The subcontractor didn't put the guardrail back and didn't notify the company that it was missing.

ANALYSIS: SCAFFOLDING PRESENTS UNUSUAL DANGERS - ALWAYS OVER-COMMUNICATE

Of course, the fact that this company didn't have to pay the OSHA fine is a minor factor in this case. Someone still died while performing work on its premises.

To prevent a tragic accident, when contractors are using scaffolding on a building, it's a good idea for the Superintendent to set explicit safety expectations up front, including that if they temporarily remove any safety devices (such as guardrails) they need to be

replaced, and communicate regularly with the subcontractors about what work has been done on a particular day and how that might compromise safety of any people on the jobsite.