

General Contractor's OSHA Duty Expanded

December 15, 2010



Did you know that a general contractor in North Carolina can now be held liable for an Occupational Safety and Health Act (OSHA) violation committed by its subcontractor's employee?

On March 17, 1999, a Safety Compliance Officer for the State Labor Department inspected a construction site in Huntersville, NC where individuals were working without proper fall protection. The job site was a 38 home subdivision being constructed by Weekley Homes, L.P.

("Weekley").

The inspector returned to the construction site the next day and once again observed individuals working without adequate fall protection. All of the individuals working without fall protection were employees of Weekley's subcontractors. (Weekley employed two people who spent the majority of their time in a trailer on the job site keeping track of materials and subcontractors.)

Nevertheless, the Compliance Officer cited Weekley for the OSHA violations for failing to conduct regular inspections of the job site as part of its accident prevention program. The citation was upheld by an Administrative Law Judge, the North Carolina Safety and Health Review Board, and a Superior Court Judge before it reached the North Carolina Court of Appeals.

In an opinion of first impression, the North Carolina Court of Appeals affirmed that a general contractor has a responsibility under OSHA to protect its subcontractor's employees. Commissioner of Labor v. Weekley Homes, L.P., 609 S.E.2d 407, 2005 N.C. App LEXIS 521 (2005). The Court first noted that OSHA's stated purpose is to provide every employee with a safe and healthy work environment. The Court reasoned that the stated purpose extended an employer's OSHA duties beyond its own employees. Under the "multi-employer work site doctrine," any employer who controls or creates a work site safety hazard is liable to all workers that are threatened by the hazard.

The North Carolina Court of Appeals concluded that OSHA standards extend beyond a general contractor's own employees. The Court explained that if a contractor has to comply with regulations to protect its own workers, it is only reasonable to extend the same duty and protections to other workers at the site who might be injured.

As a result of this case, general contractors are now responsible for protecting their subcontractor's employees from dangers that are reasonably within their power to control. Going forward, inspections should be conducted with the purpose of detecting violations committed by all employees on the jobsite.

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For further information regarding the issues described above, please contact one of our section attorneys, For further information regarding the issues described above, please contact one of our section attorneys Jenna Fruechtenicht Butler, Merrill G. Jones, II, James W. Norment, or Ryal W. Tayloe.

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