



# SAFETY SPOTLIGHT

## **Understanding OSHA: The Multiemployer Worksite Doctrine**

Many roofing contractors are surprised to learn they can be subject to an Occupational Safety and Health Administration (OSHA) citation in instances where they subcontract all their work for a particular project and, with the exception of a foreman or superintendent overseeing the subcontractor's work, have no physical presence on-site. Based on OSHA's multiemployer worksite doctrine, in such cases a roofing contractor can be cited by OSHA for violations committed by its subcontractor.

Under OSHA's multiemployer worksite doctrine, OSHA engages in a two-step process to determine whether an employer should be cited. First, OSHA determines whether the employer in question was a creating, exposing, correcting or controlling employer. If the employer falls into one of these categories, OSHA next considers whether the employer met its safety obligations. The extent of the actions required of employers to meet their obligations varies based on which category applies.

According to OSHA, the "creating" employer is the employer that created the hazardous condition that violates an OSHA standard. A creating employer can be cited in instances where none of its employees are exposed to the hazard but employees of other employers are exposed.

An "exposing" employer includes those employers on-site whose employees are exposed to the hazard, which may have been created by another employer.

A "correcting" employer is an employer responsible for correcting a hazard on-site. The correcting employer on a multiemployer worksite most often is the employer given the responsibility of installing and/or maintaining particular safety and health equipment or devices for the project. Correcting employers can be cited for OSHA violations even in instances where its employees are not exposed to the violative condition.

A "controlling" employer is an employer that has general supervisory authority over the worksite, including the power to correct safety and health violations or require others to correct them. According to OSHA, control can be established by contract or, in the absence of explicit contractual provisions, by the exercise of control in practice. For example, control can result from a combination of contractual rights that, together, give the employer broad responsibility at the site involving almost all aspects of the job, such as the ability to set schedules, resolve disputes between subcontractors and determine construction sequencing. Similar to correcting employers, controlling employers can be cited for OSHA violations in instances where its employees are not exposed to the violative condition.

A creating employer can avoid an OSHA citation under OSHA's multiemployer worksite doctrine by simply addressing the hazard it created and complying with the applicable OSHA regulation. For creating employers that are without authority to fix the hazardous condition created (consider an employer that accidentally damages or displaces a warning line or hole cover belonging to another



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trade), the OSHA violation can be avoided if the creating employer takes immediate and effective steps to keep all employees away from the hazard and notifies the controlling employer of the hazard.

An exposing employer is subject to an OSHA citation if it knew about the hazardous condition or failed to exercise reasonable diligence to discover the violation and failed to take steps consistent with its authority to protect its employees. If an exposing employer has the authority to correct the hazard, it must do so. If an exposing employer is without the authority to correct the hazard, the OSHA citation only can be avoided if the employer can show it asked the creating and/or controlling employer to correct the hazard, informed its employees of the hazard and took reasonable alternative protective measures. In extreme circumstances, such as imminent danger situations, an exposing employer can be cited for failing to remove its employees from the job to avoid the hazard.

Correcting and controlling employers must exercise reasonable care when preventing and discovering violations to avoid receiving a citation under OSHA's multiemployer worksite doctrine. OSHA considers the following factors to determine the appropriate frequency of inspections and how closely a controlling or correcting employer must inspect a job site to meet its standard of reasonable care:

- Scale of the project
- Nature and pace of the work, including the frequency with which the number or types of hazards change as the work progresses
- How much a controlling employer knows both about the safety history and safety practices of the employer it controls and that employer's level of expertise

More frequent inspections typically are needed if a controlling employer knows the other employers have a history of noncompliance. Less-frequent inspections may be appropriate when a controlling employer sees strong indications the other employer has implemented effective safety and health efforts.

Controlling employers also can help themselves avoid an OSHA citation under OSHA's multiemployer worksite doctrine by promptly correcting hazards and enforcing other employers' compliance with safety and health requirements through implementation of an effective, graduated system of enforcement and follow-up inspections.

Under OSHA's multiemployer worksite doctrine, roofing contractors need to consider whether they are a creating, exposing, correcting or controlling employer for every worksite. Roofing contractors subject to OSHA's multiemployer worksite doctrine are encouraged to take the required steps to avoid an OSHA citation.