Multi-Employer Worksites and Contractor Safety Issues

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About EORM

- **History**
  - Founded in 1990 by Environmental, Health and Safety (EHS) managers to offer comprehensive EHS management and technical consulting services to the high tech industry
  - In late 90s, successfully diversified our client base into multiple regional and vertical markets across the US and beyond

- **Today**
  - 140 employees supporting 350 customers from 6 regional offices in US; HQ in San Jose, CA
  - Multidisciplinary EHS and Sustainability consulting team
  - Well-established strategic partnering arrangements allowing for cost effective and highly responsive international support
  - ISO 14001 and OHSAS 18001 Certified
At EORM we make a positive impact on the world every day. We do this by enabling companies to be socially and globally responsible, protecting employees, preserving the environment, and building long-term sustainable solutions.
EORM Services

- **EHS Auditing**
- **EHS Compliance**
  - Environmental Compliance
  - Ergonomics
  - Industrial Hygiene
  - Process Safety
  - Safety Engineering
- **Asbestos, Lead, Mold & Remediation (Phase I-III)**
- **Construction EHS Services**

- **EHS Outsourcing**
- **Management Consulting**
  - EHS Strategic Planning
  - Management Systems
    - ISO 14K, OHSAS 18K, ISO 28K, ISO 50001
  - Business Continuity Planning
- **Sustainability Services**
Presenter

- Timothy Fasching, OHST, CHST
  - Over 35 years construction experience
  - Superintendent for large scale construction
  - Transitioned to safety in 1996
    » Site Safety Manager/Director for multiple construction projects
    » Certified OSHA Trainer
Agenda

- What we will cover:
  - The Responsibilities of all employers (Business Owners, Property Owners, GCs and Subs)
  - What you need to do to meet those responsibilities
  - The Liabilities of all employers (Property Owners, GCs and Subs)
  - What you need to do to control those liabilities
Responsibilities
Who does it apply to?

- What is a Multi-Employer Worksite?
  - Any site that has more than one Employer
  - On all multi-employer worksites (all industry sectors) more than one employer can be citable for a hazardous condition that violates an OSHA standard
Definitions:

- **Creating Employer:**
  - Employer that caused a hazardous condition

- **Exposing Employer:**
  - Employer whose own employees are exposed to the hazardous condition

- **Correcting Employer:**
  - Employer who is engaged in a common undertaking as the exposing employer and is responsible for correcting a hazardous condition
Definitions

- **Controlling Employer:**
  - This could be a Property Owner, Business Owner, GC, or a Subcontractor
  - Employer who has general supervisory authority over the worksite, including the power to correct safety and health violations itself or require others to correct them
  - Control can be established by contract or by exercise of control in practice

- All employers can have multiple roles under the definitions
Process to Determine Citations

- Two step process is used to determine if more than one employer is to be cited
  - Step One:
    » Determine whether the employer meets the criteria as a creating, exposing, correcting or controlling employer
  - Step Two:
    » Determine if the employer’s actions were sufficient to meet the obligations of the categories
    » The extent of the actions required by employers varies based on which category applies

- Each OSHA jurisdiction looks at this a little differently
OR-OSHA Multi-Employer Directive

www.cbs.state.or.us/external/osha/pdf/pds/pd-257.pdf

- Oregon Multi-Employer is defined by Program Directive A-257 which addresses Multi-Employer Workplace Citation Guidelines
- Even though it says guidelines the information is mandatory for both parties
- Program directive is only 3 pages long
- Cooperative Agreement between OR-OSHA and its stakeholders (Labor and Businesses)
- Citation does not mean the compliance officer automatically looks at Multi-Employer
Washington DOSH Multi-Employer is called the Stute Case

DOSH = WISHA = DOSH

How they manage Multi-Employer worksites is defined in WISHA Regional Directive (WRD) 27 Contractor Responsibility Under Stute v. PBMC

Document is 13 pages long and defines what a Controlling Employer must do to meet their responsibilities

Citation does mean the compliance officer automatically looks at Multi-Employer – Stute Checklist
Cal-OSHA Multi-Employer Worksites

- For the most part follows Federal OSHA and Federal Law
- But has two unique twists
  - If you receive a citation from Cal-OSHA under Multi-Employer and it also hits the courts, the plaintiff’s attorney does not have to prove you are involved
  - Cal-OSHA has its own Bureau of Investigation, so even if the Police or DA’s Office are not involved, there may still be a criminal investigation (Rare)
Controlling Employers

- A Controlling Employer:
  - Must exercise reasonable care to detect and prevent hazards and violations
    » They can be responsibly for:
      - Their employees
      - Their sub-contractors and their employees
      - Their sub-contractor’s sub-contractors and their employees
      - Leased employees
      - Borrowed employees
      - Their suppliers
      - General public (Not under OSHA but in the court system)
      - Etc.
Defining Reasonable Care

- How do you define or describe what reasonable care is?
  - It is what a reasonable person/employer/contractor/company would do

- What’s reasonable?
  - Good question without a good answer
    » OSHA and/or Courts to define

- The way I’ve always approached it is this:
  - If what you have in place is not working, you must do more
Reasonable Care Factors

- Reasonable Care Factors:
  - 1926.20 General Safety and Health Provisions
  - Subsection (b) (1)
    » It shall be the responsibility of the employer to initiate and maintain such programs as may be necessary to comply with this part. (Safety Programs/Policies/Procedures/etc.)
  - Subsection (b) (2)
    » Such programs shall provide for frequent and regular inspections of the job site, materials and equipment to be made by competent persons designated by employers
Reasonable Care Factors

- Reasonable Care Factors are based on:
  - The scale of the project
  - The nature and pace of the work
  - How much the controlling employer knows both the safety history and safety practices of the employers it controls
  - More frequent inspections if the controlling employer knows the other employer has a history of non-compliance
Evaluating Reasonable Care

- Evaluate Reasonable Care:
  - Make frequent and regular inspections?
    » What’s frequent and regular? – OR-OSHA and Washington DOSH
  - Implement an effective system for promptly correcting hazards?
  - Enforce the other employer’s compliance with safety and health requirements with an effective system of enforcement and follow-up inspections
  - Document everything
Types of Controlling Employers:

- Control established by contract
  - Your contract with the property or business owner
  - Your contract with your subs
- Control established by a combination of other contract rights
  - You are a CM, contracts are with a third party
- Control established by broad control over subcontractors at the site
  - Subs of a third party
  - Owners subs
  - If you are directing them in any way, shape or form
Subcontractor Responsibilities

- Sub-contractors
  - Follow OSHA and/or the controlling employer’s standards
  - Not to expose your employees to a hazard created by others
  - Not to create a hazard that exposes your or other employers’ employees
Controlling Employers Responsibilities

- How OSHA sees a Controlling Employer
  - The controlling employer is responsible for all the actions or inactions of the employers on their site
  - Therefore, if they are responsible they also should be held accountable
  - WISHA WRD 27 states “The General Contractor has ultimate responsibility under WISHA for job safety and health at the jobsite in all common work areas”
Liabilities
Liabilities

- Liability can arise under many different laws
  - OSHA
  - Common Law
  - Criminal Law
  - Workers Compensation Laws
Liabilities - OSHA

- Occupational Safety and Health Act (OSHA)
  - Covered that above
  - If hazards are not identified and corrected your company can be held liable
  - You maybe subject to citations and fines
  - You maybe responsible for other employers citations and fines
Liabilities – Common Law

- **Common Law (Personal injury law suits)**
  - Based on negligence or failure to do what a reasonable person would do (Reasonable Care)
  - You could be subject to lawsuits

- Typically injured employees can’t sue their employers

- Can sue Controlling Employer, property or business owners
  - May have to pay third party claims
Liabilities – Criminal Law

- Criminal Law
  - Based on Federal or State Laws
  - Based on negligence or failure to do what a reasonable person would do (Reasonable Care)
  - You could be held criminally liable (rare in Oregon, not so in other states)
    » “You” refers to the owners, GM, CEO, Presidents, etc.
    » It is the Company that is being held liable, therefore they go for the head of the company
Liabilities – Worker’s Compensation Law

- Worker’s Compensation Law
  - Liable even if the worker is negligent
  - Typically injured employees can’t sue their employers (Called sole remedy)
  - Can sue Controlling Employer, property or business owners
    » May have to pay third party claims
    » Your actions or inactions hurt my employee; my WC company is going after your GL policy for reimbursement even if the employee doesn’t
Cost of not Providing Reasonable Care

- How Lawyers see the controlling employer if an accident happens and you have not provided reasonable care:
Cost of not Providing Reasonable Care

- How Lawyers see the controlling employer if an accident happens and you have not provided reasonable care and you have a citation from OSHA
How Do You Protect Your Company?

- All Classifications of Employers:
  - Have a contract with your subs
  - Contract controls
    » Named additionally insured
    » Hold harmless agreements
    » Verbiage that holds sub-contractors responsible for fines you received because of them
    » Verbiage that they must have safety programs that meets OSHA requirements
    » Verbiage they must meet and follow OSHA safety standards
    » Know your sub-contractors safety record
    » Pre-qualify your subs
How Do You Protect Your Company?

- **Definitions**
  - Named additionally insured – A rider from their GL insurance company adding your name or company name to their insurance policy
  - Hold Harmless Agreement – They will hold you harmless for their negligence (Not yours) If their employee gets hurt they pay to defend you
  - Know your subs safety record:
    - Experience Modification Rate (EMR) – Injury rating
      - If they have workers comp they have an EMR
        - Start with a rating of 1 and you work your way up or down
    - OSHA citation history – Fed-OSHA establishment search
How Do You Protect Your Company?

- All Classifications of Employers:
  - Develop and maintain a safety program for your company
  - Verify your sub-contractors do the same
  - Following through with what you have set up in your safety program
  - Set examples by following your own safety policies, procedures and disciplinary policies
  - Do not turn a blind eye to the actions or inactions of your subs or others
How Do You Protect Your Company?

- **All Classifications of Employers:**
  - Manage your sub-contractors
  - Do regular and frequent inspections of your sites
  - Verify your subs do the same
  - Document your findings both good and bad
  - Correct all hazards immediately
  - Document your corrections and disciplinary actions of your employees and the sub-contractors
Hint on Documentation

- If it isn’t in writing it did not happen!
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- If it isn’t in writing it did not happen!
- This holds true for OSHA and the Courts
Resources

- OSHA Citation History
  - FED-OSHA Establishment search
    » http://www.osha.gov/pls/imis/establishment.html

- Safety Program Requirements and Assistance
  - Call local OSHA and ask for Consultation Services

- Additionally Insured and Hold Harmless
  - Your insurance agent or attorney

- Experience Modification Rate
  - If you have Workers Comp Insurance you have an EMR
  - Can get it from their WC Carrier (Get 5 years)
Thank you!

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- More about construction EHS Services:
  http://www.eorm.com/services/health_construction.php

- Future EORM events: