



TEAMSTERS Safety & Health FACTS

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CONTRACTORS' SAFETY AND HEALTH RESPONSIBILITIES

Contractors should comply with all applicable federal, state, and municipal laws, codes, and regulations aimed at employers to protect the safety and health of employees and the public. At the federal level, examples of such laws are those issued by the Occupational Safety and Health Administration (OSHA), the Environmental Protection Agency (EPA), and the Department of Transportation (DOT). Contractors should also abide by the terms of any Teamster-negotiated safety rules and procedures contained in a contract with the employer. Parties with potential civil and criminal liability under federal and state law for employee job-related injuries and illnesses include the premises owner, site host company, prime contractor, subcontractor, the leasing company for leased or loaned employees, and other third parties.

In evaluating and selecting contractors, the following criteria should be considered:

- ♦ Past safety and health performance (based on injury and illness data, OSHA citations, and interviews);
- ♦ Written programs and policies;
- ♦ Defined roles and responsibilities and qualifications; and
- ♦ Documented work procedures.

The Occupational Safety and Health Act (OSH Act) imposes two duties on employers:

- ♦ a “general duty” to provide a hazard-free workplace and
- ♦ the duty to obey occupational safety and health standards adopted by OSHA.

Generally, when a 'serious' OSHA citation is issued, OSHA must prove that:

- The employees were either exposed or had the possibility of exposure to the hazard;
- The employer had actual or constructive knowledge of the hazard; and
- There was a substantial probability of death or serious physical harm under the hazardous conditions.

However, on multi-employer worksites (where employees of two or more employers may be working either independently or jointly, simultaneously or not), OSHA requires an employer to protect both its employees and the employees of third parties on a common worksite where it would be best positioned to control the hazards.

In many instances, general contractors, by reason of their own supervisory capacity and control over most aspects of how the job is being performed, are expected to have and exercise sufficient control over subcontractors to require them to comply with occupational health and safety standards and to abate hazards. As a result, OSHA may hold the general contractor and the actual employer jointly responsible for OSHA violations, even if none of their non-employees are exposed to the hazard.

If a site subcontractor's employees may become exposed to a hazard that the subcontractor did not create or control but did know about or should have known about, OSHA will consider the subcontractor liable if it fails to do what is reasonable under the circumstances to protect its employees from that hazard.

Under this rule, OSHA will not cite an employer whose employees are exposed to hazards if that employer meets all of the following conditions. The employer:

- did not create the hazard;
- did not have authority or ability to correct the hazard;
- made an effort to persuade the controlling employer to correct the hazard;
- instructed its employees to recognize or avoid the hazard and, where feasible, took other protective measures, such as removal from the job; and
- notified the creating, the controlling, and/or the correcting employer(s), as appropriate, of the hazards to which their employees are exposed.

In safety and health regulations for construction, 29 CFR 1926.20, OSHA specifically prohibits contractors and subcontractors in the construction industry who are engaged in construction, alteration, and/or repair contracts from requiring any laborer or mechanic employed under the contract "to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health or safety." As employers, contractors are also required to develop any

necessary safety and health programs, to have regular inspections of the job sites conducted by competent persons, and to allow only qualified employees to operate equipment and machinery.

According to the OSHA Hazard Communication standard, 29 CFR 1910.1200, employers who produce, use, or store hazardous chemicals at a construction or non-construction worksite in such a way that the employees of other employer(s) may be exposed must ensure that the written hazard communication program includes the methods the employer will use to provide the other employer(s) on-site access to material safety data sheets. The employer must also inform the other employer(s) about the chemical labeling systems and any precautionary measures during normal and emergency conditions. The employer must also make the written hazard communication program available, upon request, to the contractor's employees and their designated representatives.

The OSHA standard titled Process Safety Management of Highly Hazardous Chemicals, 29 CFR 1910.119, requires contractors whose work may influence process safety to document in writing that each contract employee is trained in the work practices necessary to safely perform his/her job, the major known hazards of the workplace (fire, explosion, toxic release), and the emergency action plan. They must also ensure that each contract employee follows the safety rules of the facility. The contract employer is also required to advise the employer, upon request, of any unique hazards created or discovered by the contract employer's work and to provide any information regarding its safety performance and programs.

The OSHA Hazardous Waste Operations and Emergency Response standard, 29 CFR 1910.120, requires contractors who retain subcontractors for hazardous waste operations to inform the subcontractors of the site emergency response procedures and any potential fire, explosion, health, safety, or other hazards of the hazardous waste operation that have been identified by the employer's information program, and to allow them access to the written safety and health program.

The OSHA standard for Recording and Reporting Occupational Injuries and Illnesses, 29 CFR 1904, requires employers to maintain injury and illness records for their employees at each of their establishments. As a result, contract employers will be responsible for recording their employees' injuries and illnesses if they supervise their day-to-day activities. On a multi-employer worksite, each employer should maintain separate records for its own employees.

Many OSHA standards, both in construction and general industry, require the employer to train employees in the safety and health aspects of their jobs. Generally, OSHA standards make it the employer's responsibility to train its employees so they are qualified through training to safely deal with workplace hazards.

OSHA and the EPA or other agencies may also require subcontractors to coordinate their health and safety plans and responsibilities. This approach would promote efficiency, completeness, and uniformity among all parties. It would also help to ensure clear understanding of expectations and lines of authority by on-site personnel as well as an understanding of response actions during an emergency situation. At some large multi-employer worksites, employers have instituted a number of programs, such as pre-bid safety record qualification tests, safety performance evaluations, safety audits, and mandatory safe work plans to improve health and safety compliance among contractors and subcontractors.

In addition to federal and state regulations, common law imposes a duty upon employers and others to provide a healthy and safe workplace for their employees and independent contractors based on the principles of the law of negligence. Under worker compensation laws, employees are not entitled to a private right of action against their employer unless intentional or, in some cases, gross negligence is shown. Most courts permit noncompliance with OSHA requirements to be presented as evidence of negligence. In addition, some states permit OSHA violations to be proof of negligence. According to common law, an employee at a multi-employer worksite could bring an action against any responsible, negligent party other than his/her employer.

To summarize, the OSH Act and common law recognize the obligation of persons working on multi-employer worksites to recognize hazards, to abate or to attempt to abate those hazards promptly, and to train employees and others in hazard recognition and avoidance. Failure of employers to comply with their obligations to maintain a healthy and safe workplace by identifying and eliminating hazards on multi-employer worksites can result in injury, illness, or death, and liability and damages for many parties.