



ARTICLES

Safety: OSHA and the Design Professional

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OSHA Field Inspectors use a document known as the "Field Inspections Reference Manual" as guidance in conducting inspections. This manual notes that at multi-employer worksites, citations may be given to the exposing employer, the creating employer, the controlling employer, and the correcting employer. Following are the definitions of each of these classifications as well as an explanation of how a design professional can fit one of these classifications.

Exposing Employer

Simply explained, the exposing employer can be cited when their employees are exposed to a hazard. This is the most likely way a design firm could be cited during an inspection. A typical example would be a field representative of the design firm entering an unsafe trench as part of a site visit. The design firm would probably receive several citations. The most obvious citation would have to do with the employee in the unsafe trench. Additionally, the design firm would be cited for inadequate training because the employee failed to recognize the hazardous condition. Most employers provide some sort of hazard communication training to employees, but you must have documentation to prove the training took place. Otherwise, in OSHA's eyes the training never took place.

Controlling Employer

OSHA defines the controlling employer as "responsible, by contract or through actual practice, for safety and health conditions on the worksite" with the "authority for ensuring that the hazardous conditions are corrected." This situation is likely to occur for a design firm when acting as a Construction Manager. Usually when acting as Construction Manager, the design firm is contractually responsible for the health and safety of all workers at the site. If the subcontractor's employees are acting in an unsafe manner, the subcontractor will be cited as the exposing employer, while the design firm will be cited as the controlling employer.

It is also important to note that a key phrase in OSHA's definition of controlling employer is "through actual practice" a design firm can be cited as a controlling employer. For this reason, it is critical for project personnel to know what the project contract states with regard to site safety responsibilities. Make sure the design firm's field personnel know not to overstep their authority when confronted with safety issues at the project site.

Creating Employer

The creating employer is responsible for creating the hazardous condition(s). In most cases, a design firm will not be cited under this classification, as their role does not usually involve the means and methods of construction. However, if the design firm is acting as a Construction Manager, their role might include directing the manner or timing of the work. In this role, OSHA possibly would cite the design firm as a creating employer. Further, if the design firm is acting as the lead firm on a Design/Build project they are more likely to be named as a creating employer due to the increased role of responsibility in creating potentially hazardous conditions.

Correcting Employer

The correcting employer is responsible for correcting the hazardous conditions. Typically, the design firm will not be cited as a correcting employer unless they are directing means and methods. This would most likely be applied to a design firm acting as the lead firm on a Design/Build project. However, depending on the actions of employees at the project, the design firm could be cited as a correcting employer if the firm takes on means and methods responsibilities beyond the original project scope.

Clearly, a design firm can be exposed to OSHA citations just by conducting periodic site visits. If your firm is cited by OSHA, Risk Control can help. Recently, an insured was cited while acting as a Construction Manager. OSHA issued five serious violations with fines totaling \$3,000. The citations resulted from unsafe activities of subcontractors. Risk

Control assisted the insured and the subcontractors to prepare for an "informal settlement conference" with OSHA, including sending an Risk Control representative to attend the conference. As a result of the conference, three of the citations were thrown out and the remaining two citations were downgraded to "less-than-serious" with associated fines of \$300. Not only was the insured able to save \$2,700 in fines, but more importantly there were no longer any serious violations recorded against them. This is especially important when bidding on government projects because too many OSHA violations can disqualify a firm from consideration for the work. If your firm needs assistance dealing with OSHA citations or other construction safety issues, call Cyndy Turner at Risk Control (800-858-0853) for assistance.

OSHA Citation Classifications

Other-Than-Serious – Serious injury or illness will not likely result from the hazardous conditions but does have a direct and immediate relationship to employee safety and health.

Serious – OSHA must prove that there is substantial probability that death or serious physical harm could result from the hazard cited.

Repeated – Based upon previous violations where a substantially similar condition existed.

Failure to Abate – Differs from repeat violations in that the employer does not correct the hazard within the time frame delineated in the original citation.

Willful – The result of a deliberate disregard of OSHA regulations.

Criminal/Willful – When a death is caused by a firm's willful disregard of safety regulations.