Legal Implications of the OSHA Multi-Employer Policy for General Industry & Their Contractors.

Michael C. Wright – PE, CSP, President
Moniqua Suits – Director of Training
Safety through Engineering, Inc.
www.ste4u.com

PETER F. von MEISTER - Esquire
Green & Green Lawyers
www.green-law.com

AIHCE 2007
Presentation Disclaimer

These slides are intended to present general information and awareness. Situations depicted are for illustrative purposes only and not intended as an exhaustive application of the subject.

Material is not to be reproduced or used without permission.

©2007 Safety through Engineering, Inc.
Learning Objectives

1. How to identify your role in Multi-Employer Projects
   - Creating
   - Exposing
   - Correcting
   - Controlling
Learning Objectives

2. Minimize your Multi-Employer liabilities without compromising safety.
Learning Objectives

3. Understand the role of ‘Active Participation’ in categorizing your Multi-Employer role and responsibility.
Learning Objectives

4. Understand how to use your in-house tools/resources to strengthen safety culture.

Contract Requirements

Training

Supervision

Legal Team
Learning Objectives

5. Influence internal and external safety when you provide an effective and safe model for all to follow.

-Safety is a natural occurrence vs after thought.

-Contractors & Vendors are aware and oriented to your safety expectations & requirements.
Learning Objectives

Understand the Multi-Employer updates Re:

Secretary of Labor v. Summitt Contractors Inc. - OSHRC, No. 03-1622, April 27, 2007

are clarification vs a drastic overhaul or re-creation of this policy.
Discussion Highlights

1. Multi-Employer Policy Update
2. Review of OSHA Definition of Employer Types
3. Case Study
4. Q & A session
OSHA Multi-Employer Policy

1. CPL 02-00-124 – CPL 2-0.124

2. Directive

3. Scope: Clarify Agency’s ME Citation Policy

4. Instruction for OSHA Compliance Officers to issue citations.
Multi-Employer Clarification

I. Misconception of Defining Employer Types

Responsibility is based on:

1. Contract

2. Actions Taken: Management, Safety, Project Direction, Enforcement
Multi-Employer Update
Clarification

Secretary of Labor v. Summitt Contractors Inc.,
OSHRC, No. 03-1622, April 27, 2007.

OSHRC – Controlling Employers NOT responsible for OSHA compliance by their subcontractors.

*Controlling Employers are responsible for OSHA Standards if they are Creating, or Exposing Employers.*
Multi-Employer Clarification

QUALIFYING ISSUE

Active Participation

Implied or Perceived Direction, Control, Supervision, Instruction, and/or Training, of Job Responsibilities.
Active Participation
Creates a “Duty of Care”.

1. Duty of Care +
2. Breach of Duty +
3. Foreseeable Injury +
4. Resulting Directly & Proximately In Damages = Lawsuit
Multi-Employer Clarification

Is the Multi-Employer Policy automatically in place simply by the existence of multiple contractors on a work site OR by the type of work OR both?
Accepting Safety Liabilities.

Are you accepting safety liabilities via the **contract** or your **actions** taken during the project in regard to the **level of direction and control** you do or do not provide to persons on the project?
Employer Roles & Responsibilities – OSHA M/E Citation Policy, CPL 02-00-124

1. Creating
2. Exposing
3. Correcting
4. Controlling
Creating Employer

Creates a Violation Condition, e.g.:

- Remove the guardrail on the machine creating a free fall more than 6’,
- Erects a Defective Scaffold – 3 bucks no guardrail.
Exposing Employer

Employs a Worker Exposed to a Violation, e.g.:

• GC Laborer Working Near A Machine Platform Unguarded Edge – NO FP
• Subcontractor’s Electrical Employee working on scaffolding 15’ above the ground, w/o guardrail.
Correcting Employer

Has Responsibility for Correcting a Hazard

• By Contract

• By Assuming (Control)
Controlling

Has General Supervisory Authority with Power to Correct or Require others to Correct Safety & Health Violations

• By Contract
• By Exercise of Control in Practice
Case Study

1. Factory
2. Machine MFR
3. GC
4. Specialty Subcontractors
General Industry firm hires a Canadian Machine Mfr to produce a specialized machine. This state-of-the-art machine makes GI product in 25% less time. GI PO requires machine mfr to manufacture, ship, install and train its personnel onsite and within the next year.
Case Study

Canadian Machine Mfr hires US GC to unpack semi and rail delivers and to provide complete installation and training.
Case Study

GC hires Specialty Contractors.
Case Study

GI Plant Engineering and Safety Personnel assisted in helping the GC to meet a tight deadline.

GI Provided:
- Daily safety inspections for GC
- Add’l utility services GC required
- Safety device verification
- Light screen guard testing
Case Study

GI Plant Engineering and Safety Personnel verified its employees had been adequately trained according to the Purchase Order.

- Maintenance
- Operators
- Line Supervisors
- Plant Engineering & Safety
Case Study

Accident occurred 3 months after the contract was complete and it was discovered as the machine operator conducted daily operations one of the light screens was inadequate. As a result, operator – “Point of Operation”, was pulled into the machine and severely injured.
1. Plant Hires Machine Mfr for Turnkey Machine Installation

- Purchase Order vs Complete Contract
- Importance of having a contract
  - Roles & Responsibilities
2. Machine Mfr

- **Mfr** is hired to:
  - Make & Ship Machine
  - Follow contract or PO
3. Machine Mfr hires GC

- GC is hired to:
  - Machine Foundation
  - Assemble
    - De-bug
    - Start-Up
  - Follow Contract Requirements
4. GC Hired Specialty Subs

Subs hired to:

- Final Assembly
- De-bug Software Programs
- Verify Safety Devices Functions
- Start-Up & Training of Plant Personnel
Legal Provisions

**Contract To:**

- **Purchase:** Goods
- **Procure:** Delivery
- **Effect:** Installation
- **Obtain:** Training
- **Secure:** Warranty, Maintenance & Parts Support
- **Protect:** With Correct Insurance Coverage
Legal Provisions

**Good Contracts**
- Define Duties, Authority, Responsibilities, Roles
- Allocate Foreseeable Risks
- Protect You Against Foreseeable Risks
- Eliminate the “Expectation Gap” (i.e. bad assumption)
Contractor shall take precautions and shall be responsible for the safety of persons on the Project and shall comply with all applicable provisions of federal, State and municipal safety laws and engineering codes, including OSHA, ANSI, ASME standards, to prevent injury to persons on or adjacent to the Project. This provision is intended to be, and shall be construed as consistent with and not in conflict with applicable state, local and federal regulations.
Contractor shall comply with the rules and regulations of the Department of Labor, Occupational Safety and Health Administration (OSHA). Contractor shall be responsible for any fine or cost incurred as a result of any violation or alleged violation.
SAFETY PRECAUTIONS

GI shall not be responsible for installation means, methods, techniques, sequences, procedures, safety precautions, and safety programs in connection with the Work. The existence of schedules shall in no way relieve the Contractor from responsibility for complying with all the requirements of the Contract Documents.
(Somebody else) shall be responsible for scheduling the Project, coordinating its Subcontractors, and providing other services identified in the Contract Documents.
Important:

Bidders must carefully review the contract documents before the completion of the Bid Form, because laws and rules applicable to other projects are not necessarily applicable to the Project.
Each bidder by making his bid represents that he has read and understands the bidding documents.
(Our) Responsibilities.

We shall not be responsible for and shall not have control or charge of installation means, methods, techniques, sequences, procedures or scheduling used by a Contractor to comply with the Contractor’s obligations under its contract for the Project or for safety precautions and programs in connection with the Work on the Project. (We) shall not be responsible for or have any of our agents or employees, or any other persons performing any Work on the Project.
The End – Q&A