



SEPARATING PEOPLE FROM HAZARDS

Who is Responsible for Your Building's Fall Protection?

UNDERSTANDING OSHA'S MULTI-EMPLOYER WORKSITE POLICY FOR FALL PROTECTION





Multi-Employer Worksite Policy for Fall Protection

Separating People from Hazards

The Multi-Employer Citation Policy (MECP) is an Occupational Safety and Health Administration (OSHA) policy that allows for more than one employer at a worksite to be accountable and cited when a hazardous condition violates an established OSHA standard. This policy applies across many industries and covers multi-employer worksites.

A multi-employer worksite is almost any construction project in the United States: a general contractor (GC) contracts with subcontractors (SC) to perform various specialized work activities, who have in turn hired additional subcontractors to assist them with their portions of the project.

But the policy also applies to companies who may not see themselves as responsible for the safety of all these sub-contracted employees. Each company, whether they are the building owners, engineers, architects, contractors, or vendors, can be considered an employer on a multi-employer construction work site. Each company can be designated and cited for more than one employer type and can be cited for hazardous conditions even if they did not create the hazard and even when their own employees were not exposed to the hazard.

History of the MECP

It's the Responsibility of All Stakeholders to Keep Everyone Safe

The Multi-Employer Citation Policy originated in the 1970s, soon after OSHA came into existence. OSHA used the doctrine at first to issue citations to GCs who had ultimate control over their worksites. OSHA also used the policy to cite employers who created hazards for other employees. The policy applied to all employers at a worksite where two or more companies/ employers / contractors were performing tasks that contributed to the completion of a common project. Companies started challenging the application of the policy in court, and although the courts recognized OSHA's authority to issue citations, certain legal decisions questioned the application of the doctrine to multiple employers for the same hazardous conditions. However, the courts concluded that OSHA compliance is everyone's obligation, regardless of their specific role or their depth of involvement in the project.

On multi-employer worksites (in all industry sectors), more than one employer may be citable for a hazardous condition that violates an OSHA standard. A two-step process must be followed in determining whether more than one employer is to be cited.





Application of the Policy

The MECP categorizes employers into four primary groups: Controlling, Creating, Exposing, and Correcting. The policy outlines the safety ownership for each of these “employer types” and describes the responsibilities that they each have a duty to uphold on a building or a construction project. Every building and job site require safety practices for all work activity, and each “employer type” assumes responsibility for the safety of their employees and for the employees of other subcontractors.

When OSHA finds a hazardous condition on a multi-employer worksite, it will follow a two-step process to determine who to cite if an OSHA standard has been violated. Initially, OSHA determines whether the employer is a creating, exposing, correcting, or controlling employer.

Phase 1: Who to Cite

An Employer can Fall Into More than One of these Categories:

1

Creating Employer:

This is the entity that caused the hazardous condition that violated an OSHA standard. Failure to protect the edge of the rooftop or leaving skylights unprotected would be an example of exposing employees at the worksite to a fall hazard. 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.

A creating employer can avoid an OSHA fine by simply addressing the hazard(s) it created and complying with the applicable OSHA regulation.

2

Exposing Employer:

The Exposing Employer is one whose own employees are exposed to the hazard or they knew of or failed to exercise reasonable diligence to discover a hazardous condition and then failed to take steps to protect its employees from the condition.

According to OSHA, if an exposing employer has the authority to correct the hazard, it must do so. If the exposing employer lacks the authority to correct the hazard, and to avoid a citation, an exposing employer must either: (1) correct a hazard if it has the authority, or (2) if it does not have authority, ask the creating or controlling employer to correct the hazard, inform its employees of the hazard, and take reasonable alternative protective measures, which can include removing its employees from the job.





3

Correcting Employer:

The correcting employer is responsible for correcting a hazard on-site. This classification is engaged in a “common undertaking” on the same worksite as the exposing employer and fails to exercise reasonable care to prevent risk or assess and discover a hazard when it has a duty to do so. This usually occurs when the correcting employer is responsible for installing or maintaining fall protection products or systems, such as erecting guardrails on another employer’s building or property.

Correcting employers can be cited for OSHA violations even in instances in which its employees are not exposed to the hazardous condition. To avoid a citation, the correcting employer must prove it used reasonable care to identify and resolve hazards in the workplace.

4

Controlling Employer:

This type of employer has general supervisory authority over a worksite and fails to exercise reasonable care to correct safety and health violations. This group includes general contractors who hire and have full contract authority over subcontractors. Reasonable care generally requires periodic inspections of the worksite and can be demonstrated by implementing a system for correcting hazards that it finds and enforcing a safety and health compliance program.

A controlling employer can also be companies who are only tenants at the facility. Tenants can become liable as they are the intermediary between the creating employer (who created the hazard) and the correcting employer (facility owner). Often, a tenant of a facility does not believe that they are liable when work is being performed in the space they are leasing, or they do not understand that it is their responsibility to report unsafe conditions. However, it is incumbent upon tenant companies when they are having work done in their rented space or observe a fall hazard or other danger in their building to make it known to the facility owner, safety manager, or other correcting employer.

Phase 2: The Citation

An OSHA citation informs the employer of regulations and standards they may have violated, along with proposed penalties

When OSHA sends serious citations to industrial employers or to employer or construction companies, the greatest hidden cost is the loss of business opportunity for these stakeholders. In the second phase, OSHA determines if the employer has met its obligations as a creating, exposing, correcting, and/or controlling employer. If the employer has not met those obligations, then the employer or company can be cited. It is important to remember that OSHA citations are not issued as a penalty for an injury or fatality. They are issued to address each actual violation of OSHA standards as identified by the OSHA compliance officer.





Avoiding Risk and Liability

Discuss Safety in Advance

Statistics indicate that falls from height account for the greatest number of fatalities both in the industrial roof maintenance sector and the construction industry. The violation of fall protection standards and similar safety codes have given rise to this type of liability. It is important to understand that multi-employer liabilities arise in both regulatory oversight and civil court, and that any contractor meeting the definition of a Creating, Exposing, Correcting, or Controlling Employer may be subject to a lawsuit for damages sustained by an injured worker.

Facility owners and operators including building managers, engineers, architects, contractors, or vendors can be cited for hazards they did not create at a worksite, or for hazards to which their employees were never exposed. The duty to identify and remediate hazards at a worksite belong to everyone involved with the project.

Falls, accidents and incidents can grind operations to a halt and damage the reputation of companies and contractors. Safety compliance and fall protection solutions should be a top concern for both employers and employees at a job site. Developing a master safety plan for your project will ensure consistency and can save lives. If possible, carefully pre-screening contractors will allow you to understand their work histories, incident rates and company safety policies. To make sure that everyone on the job is on the same page, conducting training for all employers and employees will keep safety consistent and at the top of mind throughout the project.

Most safety hazards can be eliminated or controlled by thoroughly pre-planning project activities. Discussing safety in advance with all stakeholders allows each employer an opportunity to identify concerns. Including a fall protection audit or rooftop assessment will create dialog and identify hazards that can either be eliminated completely or reduce risk to workers.



Contact one of our qualified Fall Protection Experts and schedule a rooftop safety assessment today!



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