

OSHA'S MULTI-EMPLOYER WORKSITE DOCTRINE: Factual Scenarios to Understand YOUR Obligations

The following scenarios were developed by the [National Association of Home Builders](#) (NAHB) based upon actual disputes where the Occupational Safety and Health Administration (“OSHA”) cited an employer under the Multi-employer Worksite Doctrine (“Doctrine”)¹, the employer challenged the citation, and the dispute was litigated in front of an Administrative Law Judge or court. These cases provide useful guidance on what OSHA – and the courts – view in terms an employer’s obligations under the doctrine. A link to the court decision is provided, where available.

Employers are advised that these scenarios are provided for informational purposes only. Each factual situation will differ and employers should not assume that a particular set of facts will necessarily lead to the same or similar outcome. The information presented in these scenarios does not constitute legal advice.

Scenario 1

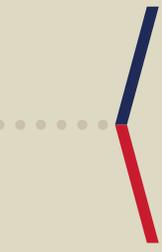
A general contractor (“GC”) hired a subcontractor (“SC”) to complete work at a worksite. The SC used scaffolding that was not erected pursuant to OSHA standards. In particular, the scaffolding was not erected under the supervision and direction of a competent person, was not properly decked, and lacked cross-bracing, guardrails, and an access ladder. The GC had almost two dozen employees onsite, including assistant superintendents and a project manager. However, none of the GC’s employees were exposed to the hazards presented by the scaffold.

The GC had overall authority over the worksite, walked the worksite at least two times a day, and conducted safety practices and weekly safety inspections. The GC also had specific authority to demand the SC’s compliance with safety requirements and could have stopped the SC’s work if safety violations were observed at the worksite. The GC could also have removed the SC from the worksite. The GC was cited for violations of OSHA standards for the SC’s failure to properly erect the scaffolding.

Conclusion: The GC was a controlling employer under the multi-employer worksite doctrine as the GC had overall authority over the worksite. The GC failed to exercise its responsibilities as a controlling employer, however, and the citations were upheld. In this instance, the GC could have detected the cited conditions because the scaffolding was in plain view and had been erected for a significant period of time. The GC failed to act to have the hazardous conditions addressed.

[McDevitt Street Bovis, Inc.](#), OSHRC Docket No. 97-1918, 2000 OSAHRC LEXIS 89, Sept. 28, 2000

¹ U.S. Department of Labor, Occupational Safety and Health Administration. CPL 02-00-124 - CPL 2-0.124 - Multi-Employer Citation Policy. Available at: https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_id=2024&p_table=DIRECTIVES. Accessed: 11/11/2019.



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Scenario 2

The general contractor (“GC”) hired a subcontractor (“SC”) to complete exterior brick masonry work. The GC had four employees that worked full-time at the worksite, a project superintendent and three assistant superintendents. The GC’s employees were responsible for coordinating the vendors, scheduling the work for the various subcontractors, and ensuring that the work of the subcontractors was performed according to their contracts. The SC used scaffolding for part of the SC’s work without implementing proper fall protection. The GC’s project superintendent directly observed the SC’s employees operating without proper fall protection on scaffolding that lacked guardrails. The GC asked the SC to correct the problem, but every time the scaffolding moved to a new location, the same problem occurred. Some of the areas where the SC used scaffolding was in plain view of the GC’s trailer located on the worksite. The GC’s employees were never exposed to the hazard. The GC was cited for the SC’s failure to provide proper fall protection on the scaffolding.

Conclusion: The GC was a controlling employer under the multi-employer worksite doctrine as it had the ability to prevent or abate the hazardous conditions created by the SCs through its reasonable exercise of supervisory authority. However, the GC failed to exercise its responsibilities as a controlling employer by knowing of the violative conduct and not fully addressing it.

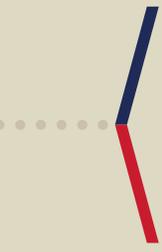
[Solis v. Summit Contractors, Inc.](#), 558 F.3d 815 (8th Cir. 2009)

Scenario 3

A general contractor (“GC”) hired a subcontractor (“SC”) to complete work at the worksite. Based on the contract between the GC and the SC, the GC provided temporary electrical services through renting a generator and spider box for the worksite so that the SC could complete the work. The GC secured the rental electrical equipment, brought it onsite, and paid rental fees. When the rental equipment was brought onsite, the GC assisted the SC in getting the generator turned on by contacting the equipment supplier and obtaining instructions. The GC had two employees on-site who observed the progress of the project and walked the worksite two times a day. The GC employees did not use the electrical services and were not exposed to any hazards. The GC had authority regarding safety-related matters, including directing its employees to point out obvious hazards to the SC at weekly meetings. The GC was cited because the rental equipment was not equipped with proper GFCI protection. When OSHA cited the GC for failure to ensure the rental equipment was not equipped with proper GFCI protection, it was the GC that contacted the equipment supplier to get proper replacements.

Conclusion: The GC was a controlling employer under the multi-employer worksite doctrine as it had authority over the electrical service. However, the GC failed to exercise its responsibilities as a controlling employer because it could have known of the violative condition with the exercise of reasonable diligence but did not address it. The lack of GFCI protection was a readily discernible condition and the GC failed to take steps to verify the safe condition of the equipment (which required only a couple of seconds and no specialized experience).

Summit Contractors v. Secretary of Labor and OSHRC, 442 Fed. Appx. 570 (D.C. Cir. 2011).



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Scenario 4

A general contractor (“GC”) hired a subcontractor (“SC”) to complete a wall at the worksite, including demolition and excavation. The GC had management personnel, including superintendents, projects engineers, and project managers at the jobsite and had overall construction management authority. The GC had the ability to control where SC’s employees worked and what projects SC’s employees were to work on during their shifts. The SC did not use soil use protective systems while excavating. One of the SC’s supervisory employees expressed concern over the safety of SC’s employees working in the area. The GC instructed the SC to continue working at an evacuation area without taking proper precautions. The GC was present during the time of the violation in full view of SC’s employees working in the excavation area without the proper soil use protective system.

Conclusion: The GC was a controlling employer under the multi-employer worksite doctrine as it had overall management authority at the site. However, the GC did not exercise its responsibilities as a controlling employer as it ordered work to be performed without appropriate safety precautions and it was aware that these precautions were not in place.

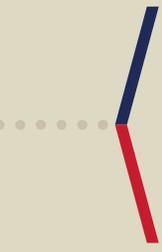
[Acosta v. Hensel Phelps Construction Co.](#), 909 F.3d 723 (5th Cir. 2018)

Scenario 5

A general contractor (“GC”) hired a subcontractor (“SC”) to perform work for development and construction of a residential subdivision. The GC had general supervisory authority over the worksite, including the power to correct identified safety or health hazards. The GC employed three construction managers and a finishing manager to work fulltime at the worksite. The construction manager performed two daily inspections of each of the active site lots to which they were assigned. The GC also had authority over the worksite and had general safety policies and procedures in place. The SC was instructed to operate a crane without the GC determining whether work would be performed within 20 feet of live overhead power lines. The GC had actual knowledge of the violation, as its construction manager was assigned to the site where the incident occurred and the construction manager spoke with certain of SC’s employees minutes prior to the incident. The GC did not expose its own employees.

Conclusion: The GC was a controlling employer under the multi-employer worksite doctrine as it had general supervisory authority over the worksite and had authority to abate any hazardous conditions. However, the GC did not exercise its authority as a controlling employer because it failed to perform the requisite diligence regarding crane work near overhead power lines. The GC had the ability to determine whether operating equipment would be within 20 feet of power lines, and if so, the GC had the authority to implement one of the required safety measures. The fact that the GC had safety policies and procedures in place did not impact issuance of the citations.

Century Communities, Inc. v. Secretary of Labor, 771 Fed. Appx. 14 (D.C. Cir. June 4, 2019)



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Scenario 6

A general contractor ("GC") hired a subcontractor ("SC") for concrete installation relating to the construction of a hotel on top of an existing parking garage. The SC employees also performed demolition work on the existing parking garage, including demolition of ramps, stairs, stairway panels, knockout slabs/panels, and caps on existing columns. The SC's employees needed to use stairways to gain access to upper floors of construction. One set of stairs was made of skeletal metal pan in which the pan had not been filled and stair landings had not been filled with concrete. Additionally, this stairway lacked handrails to prevent employees from falling outside of the structure or onto landings. No barriers were installed to prevent the SC's employees from using the stairway. The GC alleged that it was not responsible for the stairway because another subcontractor installed it and the GC's employees did not use that stairway to access their worksite area. However, the fact that the stairway lacked handrails and was not filled with concrete was in plain view of the GC and the OSHA inspector observed two of SC's employees using the stairway.

Conclusion: The GC was a controlling employer under the multi-employer worksite doctrine as it retained overall authority over the worksite. However, the GC did not exercise its responsibilities as the controlling employer because it was aware of the stairway but never took any action to restrict employees from using the stairs or otherwise ensure that it was in compliance.

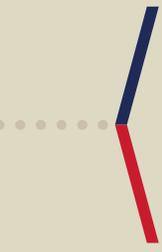
[*Fabi Construction Co., Inc. v. Secretary of Labor*](#), 370 F.3d 29 (D.C. Cir. 2004)

Scenario 7

A general contractor ("GC") hired subcontractors ("SCs") to replace the slate roof at an elementary school. The GC employed 50-60 people divided among several worksites. On the day of the inspection, the GC had two supervisory employers and one owner at the worksite. The GC was cited for lack of fall protection/guards for workers performing work on the roof. The GC had supervisory authority and control of work functions being performed and coordinated all of the work being done by the SCs. The GC had the authority to remove or discipline workers. The SC's employees regarded the GC supervisors as the ones in charge and in control of the project. The GC was also in charge of the safety program and communicated its safety rules to everyone on the worksite during daily coffee breaks.

Conclusion: The GC was a controlling employer under the multi-employer worksite doctrine as it had control over working conditions surrounding the alleged violations. However, the GC did not exercise its obligations as a controlling employer. The GC had its employees onsite daily and should have known that the SC's employees were not using fall protection or guards while performing work on the roof. The GC had the responsibility to abate the situation and ensure that the SC employees were properly secured and protected.

[*Meadows Const. Company, Inc.*](#), 2014 OSAHRC LEXIS 25 (May 6, 2014)



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Scenario 8

A general contractor (“GC”) secures roofing contracts and subcontracts the labor. The GC works regularly with a known group of work crews and hired two work crews (“SCs”) to complete work for a specific housing project. The GC had authority over correcting safety violations and exercised considerable control over the work crews. The GC was already on notice that, in order to meet the standard for reasonable care, more frequent inspections were needed. The GC was cited for violations of three construction standards, including workers performing roofing work without being tied off, siderails of portable ladders not being extended to at least three feet above roofs, and safety glasses not being used by workers.

Conclusion: The GC is a controlling employer under the multi-employer worksite doctrine as it had maintained authority over the worksite. However, the GC failed in its obligations as a controlling employer as it did not ensure that the SCs abided by OSHA standards. The GC controlled where and when the work crews worked and controlled the type of work being performed. The GC was found to be liable as a controlling employer even though it did not routinely check on worksites while work was in progress.

[Fama Construction, LLC](#), 2019 OSAHRC LEXIS 30 (June 5, 2019)