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Prime Contractors' OSHA Liability at Multi-Employer Worksites

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In this article, the authors explain the federal multi-employer framework and the reasonable-care standard, identify potential defenses and recent favorable case law, and discuss state-plan variations in select jurisdictions such as Washington and California. The authors also briefly explore related issues involving independent contractors on worksites. Finally, they discuss practical workplace measures that general contractors could consider for mitigating potential OSHA liability, including a subcontractor vetting process, enforcement of the general contractor's safety requirements, and a workplace monitoring program that is proportional to the nature of the project.

A subcontractor's employee falls from an unguarded scaffold. The general contractor's foreman walked the site that morning and saw nothing amiss. Yet following an OSHA investigation, the agency cites the general contractor, holding it responsible for a hazard its own workers never faced, and its supervisors never observed. How did this happen?

The answer lies in OSHA's multi-employer citation policy.[1] Under the policy, OSHA has taken the position that a general contractor with supervisory authority over a worksite may face citation as a "controlling employer" where OSHA contends the contractor did not exercise reasonable care to prevent or detect and abate violations, regardless of whether its own employees are exposed.[2] This article explains the federal multi-employer framework and the reasonable-care standard, identifies potential defenses and recent favorable case law, and discusses state-plan variations in select jurisdictions such as Washington and California. It

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I. THE MULTI-EMPLOYER FRAMEWORK AND THE REASONABLE CARE STANDARD

A. Federal OSHA Policy

Federal OSHA's multi-employer policy traces to seminal decisions in the 1970s.[3] Those early cases were interpreted to establish that an employer who creates or controls a hazardous condition may have obligations extending beyond its own employees to those of other employers engaged in a common undertaking.

Employers, particularly in the construction industry, have long argued the policy was implemented without proper rulemaking and in any event is not authorized by statute.[4] Under the OSH Act's General Duty Clause, "each employer [] shall furnish to *each of his employees*" a workplace free of recognized hazards (emphasis added).[5] Thus, under the General Duty Clause, an employer only owes a general duty to its employees.[6] In advancing the multi-employer policy, OSHA has argued—and certain federal circuits have found—Section 5(a)(2) "creates a specific duty to comply with standards for the good of all employees on a multi-employer worksite."[7] Section 5(a)(2) of the OSH Act provides that each employer "shall comply with occupational safety and health standards promulgated under this chapter."[8] OSHA reasons that since Section 5(a)(2) does not expressly mention employees, it may be applied more broadly to cover anyone on a shared worksite.[9]

Notwithstanding industry challenges, several federal circuits have upheld OSHA's multi-employer citation policy,[10] though the policy's legal foundation remains contested.[11] Notably, some circuits upheld the policy by deferring to OSHA's interpretation of the OSH Act under the now-overturned *Chevron* doctrine.[12] The Supreme Court's 2024 *Loper Bright Enters. v. Raimondo*[13] decision ending *Chevron* deference has undermined the analytical foundation of those decisions, and OSHA's multi-employer doctrine may now be particularly vulnerable to challenge.

As it currently stands, federal OSHA's multi-employer policy recognizes four roles at a shared worksite.[14] An employer may be a:

- Creating employer, who caused a hazardous condition that violates an OSHA standard. An employer who creates a violative condition may be cited even if only another employer's employees at the site are exposed to the hazard;

- Exposing employer, whose own employees are exposed to the hazard;

- Correcting employer, who is engaged in a common undertaking, on the same worksite as the exposing employer and is responsible for correcting a hazard. This usually occurs where an employer is responsible for installing or maintaining health/safety equipment or devices; or

- Controlling employer, who has general supervisory authority over the worksite, including the power to correct safety and health violations itself or require others to correct them.[15] That authority can arise from contract, from a combination of contract rights that necessarily touch safety, or from control exercised in practice.

An employer at a multi-employer worksite may have more than one of the above roles. OSHA has frequently treated prime contractors as controlling employers on jobsites,[16] though this classification depends on the specific facts and contractual arrangements of each project.

OSHA's policy directs enforcement through a two-step process. First, classify the employer's role; second, assess whether the employer met its corresponding obligations.[17]

Under this framework, controlling employers face a duty to exercise reasonable care to prevent and detect violations.[18] But generally, under OSHA's policy, a controlling employer's efforts to exercise the duty of care are less than what is required of an employer with respect to protecting its own employees.[19] OSHA looks at the scale of the project, the nature and pace of the work, and the experience of employees it "controls," including their safety history.[20]

It is worth noting that 29 C.F.R. § 1926.16(a) provides "in no case shall the prime contractor be relieved of overall responsibility for compliance with the requirements of this part for all work to be performed under the contract." However, this provision has limited practical significance because § 1926.16 is not incorporated into the OSH Act.[21] OSHA applies the OSH Act and the multi-employer policy—not § 1926.16—to determine whether the prime contractor met its compliance obligations on multi-employer worksites.[22]

B. The Constructive-Knowledge Standard in Controlling-Employer Cases

To sustain a citation, OSHA must prove that the cited employer knew, or with reasonable diligence could have known, of the violative condition.[23] Importantly, the Secretary must meet this burden of proof, and need not prove that the employer subjectively recognized those conditions as hazardous. A supervisor's actual *or* constructive knowledge may be imputed to the employer, though circuit nuances exist regarding "rogue supervisor" conduct where the supervisor's own misconduct is the sole basis for notice.[24]

For controlling employers on a multi-employer worksite, the knowledge inquiry often merges with whether the employer exercised reasonable care to prevent, detect, and abate violations.[25] In the absence of actual knowledge, the pertinent inquiry is whether the controlling employer met its obligation to exercise reasonable care—that is, to take reasonable measures to prevent or detect the violative conditions.[26] This inquiry requires an assessment of the nature, location, and duration of the violative conditions, as well as objective factors relating to the controlling employer's role at the worksite and its relationship with other on-site employers.[27]

Centex-Rooney Construction Co. is frequently cited in decisions addressing constructive knowledge for controlling employers.[28] It held a controlling employer is "responsible for violations of other employers where it could reasonably be expected to prevent or detect and abate the violations due to its supervisory authority and control over the worksite."[29] The contractor (alleged controlling employer) argued it did not know that subcontractors had removed the floor opening covers resulting in the alleged hazard.[30] The Commission found, however, that the contractor maintained supervisory control over the worksite by, for example, employing a full-time safety crew.[31] The Commission found constructive knowledge because the inadequate guardrails were in plain view, had existed for a "significant period of time," and the contractor could have discovered the violations through "the exercise of reasonable diligence."[32]

More recent Commission cases illustrate how fact-intensive the constructive knowledge inquiry for controlling employers could be. In *StormForce of Jacksonville, LLC*, the Commission vacated a citation where the general contractor, found to be a controlling employer with supervisory control, nevertheless lacked the actual knowledge for the citation to be sustained.[33] Since the general contractor had no actual knowledge of the violative condition—subcontractor employees working without adequate fall protection—the Commission's inquiry turned on whether the general contractor met its obligation as a controlling employer to exercise reasonable care to prevent or detect violative conditions.[34] The Commission found the general contractor's foreman followed inspection procedures, there was no evidence the foreman observed the violation, and more than a short time passed between the foreman's review and OSHA's observation.[35] Based on these facts, the Commission found the Secretary failed to establish the general contractor did not take reasonable measures to detect or prevent and abate the violative conditions at issue.[36]

The Commission has also vacated citations to general contractors where alleged safety lapses were brief and dispersed such that only continuous monitoring could have discovered them—a duty the Commission has never imposed even on exposing employers. In *Suncor*, the Commission vacated a citation issued to a host employer acting as controlling employer at a turnaround project.[37] The "turnaround" project was a 30-day shutdown of a plant to "perform capital projects, inspections for regulatory compliance, cleaning, and maintenance."[38] One of the capital projects involved the replacement of tubes inside a large heater.[39] Among other things, OSHA cited Suncor for a contractor's failure to employ fall protection on a scaffold used to replace the heater tubes.[40] In reversing the administrative law judge (ALJ), the Commission emphasized the secondary nature of a controlling employer's duty, rejected use of exposing-employer benchmarks, and accepted reliance on experienced contractors with documented safety performance, particularly where conditions were hidden and existed for a limited duration.[41] The Commission also held that conditions confined within a vessel or structure and not in plain view tend to negate constructive knowledge absent other red flags.[42] The Secretary failed to show that Suncor could have known about the specific failure of personal fall protection on an unguarded outrigger platform inside the heater, given the inspection cadence and the visibility limits of the work.[43]

In *Summit Contracting Grp.*, the Commission again vacated a citation to a general contractor acting as controlling employer where a subcontractors' fall-protection lapses were brief—lasting only 10 to 15 minutes—and dispersed.[44] The Commission reaffirmed that a controlling employer's duty is secondary and that knowledge was not established where violative conditions were brief and dispersed, and continuous monitoring would have been required to discover them.[45] In both *Suncor* and *Summit*, the Commission reaffirmed that a controlling employer's duty of reasonable care is lower than that of an exposing employer and must be assessed against objective site conditions and the subcontractor's track record.

Other decisions illustrate the fact-intensive nature of the constructive knowledge inquiry. In *Secretary of Labor v. Jacobs Technology Inc.*, an ALJ found a NASA site manager liable both as an exposing and controlling employer.[46] Jacobs, the prime contractor, was responsible for abating lead-based paint and asbestos from pipes and surrounding insulation in tunnels under NASA facilities.[47] The contractor's managers routinely walked the tunnels, directed sub-tier work sequencing, imposed and signed off on site-specific safety plans, and maintained an oversight system that did not catch or correct recurring deficiencies.[48] The decision treated the construction manager's daily review and signature of defective Safe Plan of Action forms as constructive knowledge imputable to the prime contractor.[49] According to the ALJ, a reasonable controlling employer would have probed discrepancies and verified the subcontractor's measures in light of project scale and the nature of the work.[50]

The *Jacobs* ALJ decision also addressed the employer's argument that its contract disclaimed controlling-employer status, finding that contractual disclaimers alone were insufficient to alter an employer's obligations under the Act.[51] The weight given to such contractual provisions may vary depending on the specific facts and the forum.

In *Fama Construction*, the Commission—and later the Eleventh Circuit—affirmed controlling-employer liability where the controlling employer had halted or failed to implement inspection programs and did not ensure compliance despite awareness of recurring fall protection issues with the subcontractors it hired.[52] Although not a general contractor, Fama had been hired as the exclusive roofing contractor of a builder for new residential townhomes.[53] OSHA found that notwithstanding awareness of previous fall protection violations, Fama ended its training policy and halted safety inspections of its worksites, apparently "based on legal advice that work crew inspections and work crew training could be viewed as evidence of an employment relationship with the workers."[54]

The D.C. Circuit's decision in *IBP, Inc. v. Herman*, likely marks an important outer boundary on controlling-employer liability, particularly outside construction.[55] In *IBP*, the host employer contracted with a company to clean equipment at its meatpacking plant.[56] When a contractor employee was killed after removing a barrier guard without locking out the equipment, OSHA cited both the contractor and IBP.[57] The Commission found IBP liable based on its authority to discipline individual contractor employees, but the D.C. Circuit vacated, holding that this authority was insufficient to establish "control" for multi-employer purposes.[58] The court emphasized that the multi-employer doctrine requires more than peripheral authority over another employer's workers.[59] *IBP* could be interpreted to hold that controlling-employer status requires genuine supervisory authority over the worksite, not merely incidental contractual rights.[60] In *IBP,* the D.C. Circuit also questioned the validity of OSHA's multi-employer policy without deciding the issue, making it one of the few circuits that have not fully adopted the theory.[61]

C. Independent Contractors and Who Is the Employer for OSHA Liability

OSHA can only cite an "employer."[62] When the Secretary targets a company that claims its workforce is made up of independent contractors, the courts generally apply the Supreme Court's test from *Nationwide Mutual Insurance Co. v. Darden*.[63] The principal guidepost is control over the manner and means of the work.[64] Secondary factors include who supplies tools and instrumentalities, who sets hours and assigns work, how workers are paid, the duration and exclusivity of the relationship, whether the putative employer can hire or fire, whether the work is part of the hiring party's regular business, and tax and benefits treatment.[65] No single factor controls, and the inquiry remains holistic and record-specific.[66]

In a recent case, *Secretary of Labor v. JMT Services, Inc.*, the ALJ vacated all items after finding that the Secretary failed to prove JMT was the employer.[67] Workers signed independent-contractor agreements, furnished their own tools, set their own hours, worked for multiple companies, invoiced by the job based on a negotiated percentage, and received no benefits or tax withholding.[68] The owner's role was limited to offering projects, providing plans, and occasionally loaning nonessential equipment or storage, and he did not supervise the work.[69] On balance, most *Darden* factors pointed to independent-contractor status and the citations were vacated.[70]

In another recent case, *Secretary of Labor v. Pettengill Family Restoration, LLC*, the ALJ reached a similar result.[71] The record showed workers provided their own tools, coordinated scope and changes with an upstream builder rather than with Pettengill, often worked for other companies, and billed for work.[72]

These case-specific determinations do not create bright-line rules, but they underscore two points. First, labels are not dispositive, and tribunals look at who controls the work.[73] Second, a consistent, well-documented structure that devolves control to autonomous crews could preclude an "employer" finding.

Earlier decisions across different settings confirm the same analysis and illustrate that labels and 1099 forms are not controlling. In *R&S Roofing*, the ALJ analyzed *Darden* and held that workers were employees.[74] Among other factors, the putative employer-controlled hours, assignments, safety training, and on-site direction were dispositive, even though contract documents proclaimed the workers to be subcontractors and the tax forms suggested otherwise.[75] The ALJ emphasized that the right to control manner and means outweighed paperwork.[76]

The Commission has similarly held that contractual labels and surface-level indicia are insufficient to establish an employment relationship where the putative employer has no actual right to control the manner and means by which the work is performed. For example, in *Secretary of Labor v. Allstate Painting and Contracting Co.,* the Commission reversed citations against Allstate after finding it was not the employer of workers on a bridge painting project, despite contractual language identifying the workers as "Allstate's employees."[77] Applying the *Darden* test, the Commission found that Allstate lacked control over the workers because it did not supervise their work, could not hire, fire, or discipline them, did not pay them (despite getting paid from an account bearing Allstate's name), and did not supply equipment, tools, or training.[78]

In *Warzala Construction*, the ALJ applied *Darden* and found an injured worker to be an independent contractor where the putative employer no longer retained control of the project's manner and means, several enumerated factors favored independence, and the economic realities did not show subordination.[79] This resulted in vacatur of the citations.[80]

Similarly, in *FM Home Improvement*, the ALJ found the roofers to be employees under *Darden* where management visited daily, gave instructions, set hours, and fired workers after the inspection.[81]

Likewise, in *A.H. Sturgill Roofing*, because the roofing contractor directed the day-to-day means and methods of loaned or temporary personnel, the court found the contractor to be the employer for OSHA liability purposes.[82] The case involved OSHA allegations that the roofing contractor violated the general duty clause related to outdoor heat hazards, after an employee collapsed while working on a roofing project and subsequently died.[83] The ALJ treated the roofing contractor as the employer of temporary workers supplied by a staffing agency because the contractor controlled the means, methods, location, and timing of their work.

In sum, the inquiry to identify the employer for OSHA liability purposes is essentially grounded in who controls the work's manner and means.

II. STATE PLANS

State OSHA plans approved under Section 18 of the OSH Act must be "at least as effective" as the federal program but can (and some do) impose additional obligations on employers.[84] For national contractors, this divergence between federal OSHA and state-run plans has created a challenging patchwork for legal compliance. Below are a representative set of states that have further added to the federal approach for enforcement at multi-employer worksites via regulation or guidance.

California

California codified multi-employer enforcement, allowing citations to creating, correcting, and controlling employers regardless of exposure of their own employees.[85] Cal/OSHA's P&P C-1C supplies evidentiary and process guidance for citations.[86] Regulators may establish control through explicit contract rights, combined project authority affecting safety, or actual practice.[87]

California provides an affirmative defense for exposing employers that take reasonable steps when the hazard was created or allowed by another employer. Under Cal/OSHA's P&P C-1C, a District Manager must forward proposed citations for creating, controlling, and correcting employer violations to a Regional Manager for review and concurrence.[88]

Michigan

MIOSHA's COM-04-1 adopts the federal four-role framework.[89] The policy emphasizes that a controlling employer's duty of reasonable care is lower than that of an exposing employer, and supplies detailed documentation protocols, flowcharts, and worksheets for determining control and knowledge.

The State guidance differentiates between broad site conditions and hazards specific to a subcontractor's operation.[90] Common-area conditions are implicitly the controller's responsibility, while task-specific hazards are primarily the subcontractor's, subject to imminent danger.[91] MIOSHA COM-04-1 recognizes that a controlling employer is implicitly responsible for general conditions that can affect multiple employers, like housekeeping, guarding of walking-working surfaces, handrails and stairways, general signage, and ambient noise or carbon monoxide.[92] Task-specific hazards, like a missing saw guard or respirator noncompliance, are typically the subcontractor's primary responsibility, subject to the controlling employer's duty to act when the danger rises to imminent danger.[93]

Virginia

VOSH's 16VAC25-60-260 specifies that creating, correcting, and controlling employers "shall normally be cited" whether or not their own employees were exposed and codifies defenses for exposing employers who lacked authority to correct but took prescribed steps.[94]

Washington

In some respects, Washington stands apart from other state plans. In *Stute v. P.B.M.C., Inc.*, the Washington Supreme Court adopted a more expansive approach, recognizing the general contractor's supervisory authority as *per se* control.[95] This approach is notably more aggressive than the federal standard and imposes obligations that go beyond the reasonable-care framework applied by most other jurisdictions.[96]

WISHA DOSH Directive 27.00 implements direct *Stute* citations to upper-tier contractors where a lower-tier commits a serious violation, subject to recognized defenses.[97] The policy notes "[p]roperty owners, developers, and other employers may also be liable for the safety of non-employees, depending on the degree of control exercised and whether they control or create a hazard."[98] In *Vargas v. Inland Washington, LLC*, the Washington Supreme Court confirmed both direct liability (common law and statutory WISHA duties) and vicarious liability via delegation or retained control.[99]

III. RISK MITIGATION STRATEGIES

A controlling employer's best evidence to support its reasonable duty of care could be a documented and effectively implemented monitoring system that is proportional to the project's size, operations and risks, and considers the subcontractors' safety expertise and compliance. Among other things, such a monitoring policy could require periodic inspections at a frequency driven by the project scale, hazards, and the subcontractor's record. It could also benefit from an effective, graduated system of enforcement for subcontractor noncompliance. Striking the appropriate balance of supervision is important, since the more a general contractor supervises and engages in the management of subcontractor safety, the more responsibility and potential liability could be imposed.[100] Importantly, the case law reflects that a controlling employer's duty of care is secondary and less demanding than that of an exposing employer, and a well-documented, proportional monitoring system can serve as strong evidence that the employer met its obligations.

The practice of vetting subcontractors prior to retention may also serve as evidence of reasonable care. Federal OSHA's multi-employer policy and several state instructions weigh the subcontractor's safety history, technical competence, and demonstrated compliance efforts when judging a controlling employer's duty. Additionally, documented and implemented procedures for enforcement of the controlling employer's safety requirements against subcontractors may be additional evidence to support a reasonable duty of care. When a controlling employer knows the subcontractor has a history of noncompliance, courts may look for evidence of more frequent and probing inspections of the subcontractor's work to support a reasonable duty of care by the controlling employer.

Further, while according to OSHA employers may not contract away safety obligations, agreements clearly allocating those obligations especially where the subcontractor provides a specialty service may also be helpful to support the reasonable duty of care argument.

Finally, indemnity and insurance contracts sit downstream of OSHA liability (and are not the subject of this article) but remain important. Indemnity and insurance provisions do not avoid OSHA citations but may affect civil liability allocation. Where permitted by state law, such contracts may consider allocating the cost of citations/penalties and abatement to the party that created or controlled the hazard, where possible include additional insured status, and potentially require coverages that match the project's risk profile. While contractual allocation does not defeat OSHA citations, they may impact financial consequences and may encourage stronger sub-tier compliance.

NOTES

1. See Occupational Safety & Health Admin., CPL 02-00-124, Multi-Employer Citation Policy (Dec. 10, 1999), https://www.osha.gov/enforcement/directives/cpl-02-00-124#MULTI.

2. See Acosta v. Hensel Phelps Constr. Co., 909 F.3d 723, 728-29 (5th Cir. 2018) ("Under [the multi-employer] policy, an employer who causes a hazardous condition . . . or a

general contractor or other employer having control over a worksite who should have detected and prevented a violation through the reasonable exercise of its supervisory authority . . . may be cited for a violation, whether or not its own employees were exposed to the hazard.").

3. See, e.g., Anning-Johnson Co. v. U. S. Occupational Safety & Health Rev. Comm'n, 516 F.2d 1081, 1091 n.21 (7th Cir. 1975) ("[W]e are not at all sure that a general contractor, who has no employees of his own exposed to a cited violation is necessarily excused from liability under the [OSH] Act."); Brennan v. Occupational Safety & Health Rev. Comm'n, 513 F.2d 1032, 1038 (2d Cir. 1975) ("This specific duty to comply with the Secretary's standards is in no way limited to situations where a violation of a standard is linked to exposure of his employees to the hazard."); Anning-Johnson Co., 4 BL OSHC 1193 (No. 3694, 1976), at *4 ("We find ourselves in general agreement with the principles enunciated in the cogent opinions of the Second and Seventh Circuit Courts of Appeals."); Grossman Steel & Aluminum Corp., 4 BL OSHC 1185 (No. 12775, 1976).

4. See, e.g., Solis v. Summit Contractors, Inc., 558 F.3d 815, 821, 826 n.6 (8th Cir. 2009) (listing cases in different circuits where general contractors challenged the policy and noting that industry's assertions that "the Secretary could not lawfully apply the multi-employer worksite policy without first adopting it through the informal rulemaking process of the Administrative Procedure Act. . . . [M]ay have some merit.").

5. OSH Act Sec. 5(a)(1), 29 U.S.C. § 654(a)(1).

6. See Summit Contractors, 558 F.3d at 818 ("Subsection (a)(1) creates a general duty running only to an employer's own employees. . . .").

7. Id.; see also Acosta, 909 F.3d at 733 (finding most federal circuits hold Sec. 5(a)(2) "unambiguously accords with the Secretary's interpretation" or is at least ambiguous).

8. 29 U.S.C. § 654(a)(2).

9. See, e.g., Anning-Johnson, 516 F.2d at 1086 (holding that subsection (a)(2), "unlike (a)(1) (the general duty clause), does not speak in terms of employee exposure to hazards.").

10. See, e.g., Id.; Beatty Equip. Leasing, Inc. v. Sec'y of Lab. et al, 577 F.2d 534 (9th Cir. 1978); R.P. Carbone Const. Co. v. Occupational Safety & Health Rev. Comm'n, 166 F.3d 815 (6th Cir. 1998); Brennan, 513 F.2d 1032.

11. See, e.g., Fama Constr., LLC v. U.S. Occupational Safety & Health Rev. Comm'n, No. 23-12346, 2026 WL 396771 (11th Cir. Feb. 12, 2026); Universal Const. Co. v. Occupational Safety & Health Review Comm'n, 182 F.3d 726 (10th Cir. 1999); Summit Contractors, 558 F.3d 815; Acosta, 909 F.3d 723; Century Communities, Inc. v. Sec'y of Lab., 771 F. App'x 14, 15 (D.C. Cir. 2019) (noting that the D.C. Cir. had previously questioned the Secretary's statutory authority to cite an employer under the multi-employer policy but that question was not raised or briefed in the decision at bar).

12. See, e.g., Acosta, 909 F.3d at 735 ("[W]e find that Congress's intent in promulgating § 654(a)(2) is ambiguous on the issue of the Secretary's authority to issue citations to controlling employers at multi-employer worksites, thereby opening the door to Chevron step two[,]" which "directs courts to accept an agency's reasonable resolution of an ambiguity in a statute that the agency administers.").

13. 603 U.S. 369, 144 S.Ct. 2244 (2024).

14. Occupational Safety & Health Admin., CPL 02-00-124, Multi-Employer Citation Policy (Dec. 10, 1999), https://www.osha.gov/enforcement/directives/cpl-02-00-124#MULTI.

15. See Fama Constr., LLC v. U.S. Dep't of Lab., No. 19-13277, 2022 WL 2375708, at *4 (11th Cir. June 30, 2022) ("The type of control required is not control over 'the manner and means by which the [work] product is accomplished,' but control over matters affecting the safety of the workers on the jobsite." (quoting Nationwide Mut. Ins. Co. v. Darden, 503 U.S. 318, 323 (1992) (citations omitted))).

16. See, e.g., 29 C.F.R. § 1926.751 (1979) ("Controlling contractor means a prime contractor, general contractor, construction manager or any other legal entity which has the overall responsibility for the construction of the project.").

17. Occupational Safety & Health Admin., CPL 02-00-124, Multi-Employer Citation Policy (Dec. 10, 1999), https://www.osha.gov/enforcement/directives/cpl-02-00-124#MULTI.

18. Id.

19. Id.; see also Suncor Energy (U.S.A.) Inc., 2019 CCH OSHD ¶ 33705, at *4 (No. 13-0900, 2019) ("A controlling employer's duty to exercise reasonable care 'is less than what is required of an employer with respect to protecting its own employees.'" (quoting Summit Contractors, Inc., BL OSHC 1777, at *4 (No. 03-1622, 2009))).

20. Occupational Safety & Health Admin., CPL 02-00-124, Multi-Employer Citation Policy (Dec. 10, 1999), https://www.osha.gov/enforcement/directives/cpl-02-00-124#MULTI.

21. See 29 C.F.R. § 1910.12(c) (1974) ("Subparts A and B [which include 1926.16] have pertinence only to the application of section 107 of the Contract Work Hours and Safety Standards Act (the Construction Safety Act)"); see also Tishman Realty & Constr. Co., Inc., 3 OSAHRC 1221, at *1 (No. 567, 1973) ("The provisions of 29 CFR 1910.12(c) state that subpart B of 29 CFR 1926, which includes the above cited section, is not incorporated as an occupational safety and health standard under section 6 of the Act.").

22. See Letter of Interpretation, Occupational Safety & Health Admin., Application of OSHA Act and Multi-Employer Citation Policy rather than CWHSSA to ensure subcontractors meet construction occupational safety and health responsibilities (Mar. 15, 2005), https://www.osha.gov/laws-regs/standardinterpretations/2005-03-15 ("OSHA utilizes the OSH Act and the Multi-Employer Citation Policy, rather than CWHSSA and 29 CFR 1926.16, in determining the compliance obligations of prime contractors at construction sites. . . .").

23. See Summit Contractors, Inc. v. Sec'y of Lab., 442 F. App'x 570, 572 (D.C. Cir. 2011).

24. See New River Elec. Corp. v. Occupational Safety & Health Rev. Comm'n, 25 F.4th 213, 220 (4th Cir. 2022) (noting the competing laws of different circuits regarding supervisor misconduct).

25. See Evergreen Constr. Co., 26 BL OSHC 1615, at *9 (No. 12-2385, 2017) (Attwood, Comm'r) (collecting cases and finding "[t]he general structure of the knowledge inquiry in a case resting on multi-employer liability is identical to that of the typical case, in which the employer is being cited for a violation it commits with respect to its own employees. Thus, in all cases the Secretary must prove that the employer had actual or constructive knowledge of the violation. And in all cases constructive knowledge is established when an employer 'with the exercise of reasonable diligence could have known about the existence of the violation.'").

26. See Summit Contracting Grp., Inc., 2022 CCH OSHD ¶ 33884 (No. 18-1451, 2022).

27. Id. (citing Suncor Energy, 2019 CCH OSHD ¶ 33705 at *5).

28. 16 BNA OSHC 2127 (No. 92-0851, 1994).

29. Id. at *2.

30. Id.

31. Id. at *3-4.

32. Id. at *2.

33. No. 19-0593, 2021 WL 2582530 (OSHRC Mar. 8, 2021).

34. Id. at *7.

35. Id. at *8.

36. Id.

37. 2019 CCH OSHD ¶ 33705 (No. 13-0900, 2019).

38. Id. at *1.

39. Id.

40. Id.

41. See Id.

42. Id. at *5.

43. Id. at *10.

44. 2022 CCH OSHD ¶ 33884 (No. 18-1451, 2022).

45. Id. at *5.

46. No. 21-0267 (OSHRCALJ 2023), https://www.oshrc.gov/wp-content/uploads/Jacobs-Technology-Incorporated-21-0267-Decision-Final.pdf. The Jacobs ALJ decision was pending Commission review and was not final when issued in September 2023. Over a year later, the Commission had still not reviewed the decision, and we were unable to determine the final disposition. See U.S. H. Comm. on Edu. and the Workforce Letter to OSHRC (Dec. 20, 2024), https://democrats-edworkforce.house.gov/imo/media/doc/ranking_members_scott_and_adams_letter_to_osha_re_backlog_of_cases.pdf (noting growing backlog of cases awaiting discretionary review from OSHRC and citing Jacobs as an example).

47. Jacobs, No. 21-0267 at 1-2.

48. Id. at 9.

49. Id.

50. Id.

51. Id.

52. Fama Constr., LLC v. U.S. Occupational Safety & Health Rev. Comm'n, No. 23-12346, 2026 WL 396771, (11th Cir. Feb. 12, 2026).

53. Fama Constr., LLC, Respondent., 2023 CCH OSHD ¶ 33917 (No. 19-1467, 2023).

54. Fama Constr., 2026 WL 396771, at *5-6; Fama Constr., 2023 CCH OSHD ¶ 33917.

55. 144 F.3d 861, 866 (D.C. Cir. 1998).

56. Id. at 863.

57. Id.

58. Id. at 867.

59. Id.

60. Id.

61. Id. at 865-66. Based on this precedent, the D.C. Circuit may be a preferable forum for general contractors challenging an unfavorable OSHRC decision. Under Section 11(a) of the OSH Act, adverse OSHRC decisions may be appealed in the circuit in which the violation is alleged to have occurred, where the employer has its principal office, or in the Court of Appeals for the District of Columbia Circuit.

62. See 29 U.S.C. §§ 652(5) and 654(a). Section 652 of the OSH Act defines an employer as "a person engaged in a business affecting commerce who has employees, but does not include the United States (not including the United States Postal Service) or any State or political subdivision of a State." Under Section 654, regarding the duties of employers and employees, each employer (1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees; (2) shall comply with occupational safety and health standards promulgated under this chapter."

63. 503 U.S. 318 (1992). See, e.g., Absolute Roofing & Const., Inc. v. Sec'y of Lab., 580 F. App'x 357, 361 (6th Cir. 2014) (applying Darden factors and concluding worker was an employee rather than independent contractor for OSHA liability purposes).

64. Darden, 503 U.S. at 323 (quoting Cmty. for Creative Non-Violence v. Reid, 490 U.S. 730, 750 (1989).

65. Id.

66. See Id. at 323-24.

67. No. 23-0712, 2025 WL 818777, at *12 (OSHRCALJ Feb. 5, 2025).

68. Id. at *3-5, *10-11.

69. Id. at *3-4, *7-9.

70. Id. at *12.

71. No. 23-1249, 2025 WL 1703355, at *17 (OSHRCALJ May 5, 2025).

72. Id. at *7, 15.

73. See Warzala Constr., Respondent., 2020 CCH OSHD ¶ 33826, n.14 (No. 19-0265, 2020) (citing Loomis Cabinet Co. v. Occupational Safety & Health Rev. Comm'n, 20 F.3d 938, 942 (9th Cir. 1994) for the proposition that "labels carry little weight in determining a hired party's status as an employee.").

74. 24 BL OSHC 2151, at *8 (No. 12-2427, 2014).

75. Id. at *8-10.

76. Id. at *11.

77. Allstate Painting & Contracting Co., Inc., 21 BL OSHC 1033 (No. 97-1631, 2005).

78. Id. at 2-3.

79. 2020 CCH OSHD ¶ 33826 (No. 19-0265, 2020).

80. Id.

81. 22 BL OSHC 1531 (No. 08-0452, 2009).

82. No. 17-1676, 2019 WL 1099857 (OSHRCALJ Feb. 28, 2019), rev'd on other grounds, 2019 CCH OSHD ¶ 33712 (No. 13-0224, 2019).

83. Id. at *1.

84. See 29 U.S.C. § 667.

85. See 8 CCR 336.10.

86. Cal. Div. of Occupational Safety and Health Policy and Procedures Manual, Multi-Employer Worksite Inspections, P&P C-1C (Rev. Dec. 8, 2000), https://www.dir.ca.gov/DOSHPol/P&PC-1C.pdf.

87. Id.

88. Id.

89. See Mich. Occupational Safety and Health Admin. Agency Instruction, Multi-Employer Work Sites, MIOSHA-COM-04-1R7 (Mar. 27, 2023), https://www.michigan.gov/leo/-/media/Project/Websites/leo/Documents/MIOSHA/Policies-and-Procedures/Instructions/Agency-Instructions/MIOSHA-COM-04-1.pdf.

90. Id. at App. B, §§ III.C–D.

91. Id.

92. Id. at App. B, § III.C; App. C, Flowchart C.

93. Id.

94. See 16 Va. Admin. Code § 25-60-260, https://law.lis.virginia.gov/admincode/title16/agency25/chapter60/section260/.

95. 114 Wash.2d 454, 788 P.2d 545 (1990).

96. Id.

97. See Wash. Div. of Occupational Safety and Health, DOSH Directive 27.00, General or Upper-Tier Contractor (Stute) Responsibility, at 3 (Apr. 25, 2022), https://www.lni.wa.gov/safety-health/safety-rules/enforcement-policies/DD2700.pdf.

98. Id. at 1.

99. 194 Wash.2d 720, 452 P.3d 1205 (2019).

100. See, e.g., Marshall v. Knutson Const. Co., 566 F.2d 596, 601 (8th Cir. 1977) ("The general contractor's duty with respect to safety standard violations by its subcontractors is not necessarily full compliance, but depends on what measures are commensurate with its degree of supervisory capacity.").