

Safety Obligations of Employers at Multi-Employer Worksites

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PRACTICES OSHA, Labor and Employment

The Occupational Safety and Health Review Commission's ("OSHRC") January 10, 2023 Remand [Order](#) in *Secretary of Labor v. A Crane Rental LLC* is a reminder of the differences in the safety obligations between "creating" employers and "controlling" employers at multi-employer worksites. By way of background, based on their respective roles at a multi-employer worksite, an employer could be categorized as a controlling, creating, exposing or correcting employer, and the safety obligations of the employer vary by category. Relevant to this case, according to OSHA's Multi-Employer Citation Policy:

- A "creating" employer is the employer that caused a hazardous condition that violates an OSHA standard. A creating employer can be cited even if the only employees exposed are those of other employers at the multi-employer worksite.
- A "controlling" employer is the 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. The extent of the measures that a controlling employer must implement to satisfy this duty of reasonable care is less than what is required of an employer with respect to protecting its own employees. This means that the controlling employer is not normally required to inspect for hazards as frequently or to have the same level of knowledge of the applicable standards or of trade expertise as the employer it has hired.

In *A Crane Rental*, an employer contracted to provide a crane and an operator at a multi-employer worksite, to lift employees of a second employer to the top of a tower that was being upgraded. OSHA cited the crane-provider (the "Cited Employer") for exceeding the maximum number of individuals the crane platform was designed to hold and for failing to ensure that employees (of the second employer) to be hoisted attended a pre-lift meeting with the Cited Employer's crane operator. Following a hearing, the administrative law judge vacated the citation on both counts. Among other things, the judge found that OSHA failed prove that the Cited Employer's own employees were exposed to the alleged hazard or that the Cited Employer had control over the safety of the exposed persons.

On appeal, OSHA argued that the judge erred in treating the case as if it involved a controlling employer, and that OSHA's position was that the Cited Employer was a creating employer. OSHRC cited to references in the record referring to the Cited Employer as "creating" the alleged hazard, and remanded the case for consideration of whether OSHA had proven that the Cited Employer was a creating employer and for assessing liability based on that determination.

A Crane Rental is a reminder of the importance of the different safety obligations of creating and controlling employers at multi-employer worksites. Employers at such worksites must be cognizant of the category that applies to them, understand the safety obligations based on that role and ensure compliance with those obligations.