

# Controlling Employers May Benefit from Comprehensive Safety Policies for Contractors

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**PRACTICES** Labor and Employment, OSHA

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In *Secretary of Labor v. Suncor Energy U.S.A., Inc.*<sup>1</sup>, the Review Commission limited a controlling employer's "reasonable care" obligations in the context of scaffolding issues in a confined space at a construction site. In *Suncor*, one of Suncor's contractors erected scaffolding inside the confined space and made modifications to this scaffolding at a multiemployer worksite. Two employees of another contractor, while using the scaffolding to examine welds inside the confined space, fell and suffered severe injuries. OSHA cited Suncor for violation of §1926.451(g)(1), for lack of fall protection while employees were working on the scaffold. After an administrative law judge upheld the citation, the Commission reversed.

The Commission found that Suncor met its obligation of reasonable care, emphasizing that a controlling employer's obligation "depends in part on the nature, location, and duration of the conditions." Here, the fact that the defective scaffold and failure to use fall protection was hidden in the confined space and that no Suncor employee was designated to work inside the confined space were significant as to lack of the controlling employer's knowledge of the hazard. Further, the Commission considered three factors: the nature of the work, the scale of the project, and Suncor's efforts to "hire only safety-conscious contractors." First, the Commission explained that the controlling employer is not required to enter a confined space unless its own employees are working in that space. Next, the Commission pointed out that "Suncor's safety efforts were more than commensurate with the size, complexity, and the short time frame associated with this project." Third, it applauded Suncor's efforts to hire safety-conscious contractors and extensively train contractor employees on safety and work rules, including a policy that provides for punishing safety violators.

Under *Suncor*, it may be prudent for controlling employers at multi-employer sites to have comprehensive safety programs for contractors working at the site.

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<sup>1</sup> OSHRC, No. 13-0900, 2019 WL 654129 (Feb. 1, 2019)