

Kapoor and Keller for Employee Relations Law Journal: Prime Contractors' OSHA Liability at Multi-Employer Worksites

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Prime contractors and general contractors can face OSHA liability for hazards affecting subcontractor employees, even when their own workers are not exposed. In an article authored for *Employee Relations Law Journal*, Haynes Boone Partner [Mini Kapoor, Ph.D.](#) and Associate [Jonathan Keller](#) examine OSHA's multi-employer citation framework, recent case law shaping the reasonable-care standard for controlling employers and key distinctions among state OSHA plans.

Read an excerpt from their article below.

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 multiemployer 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 also briefly explores related issues involving independent contractors on worksites. Finally, it discusses 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.

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

A. Federal OSHA Policy

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

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

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. ...

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 Prime Contractors' OSHA Liability at Multi-Employer Worksites Vol. 52, No. 3, Winter 2026 10 Employee Relations Law Journal 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.

Read the full *Employee Relations Law Journal* article [here](#).