Regulatory Pitfalls in Managing Multiple Employers

Presented by

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What OSHA Citation?
Multi-Employer Citation Policy

- Creating Employer
- Exposing Employer
- Correcting Employer
- Controlling Employer
Consider this Example Incident
Example Incident

- Mixme Inc. (Host)
- Acme (General)
- Structeze
- Cleanjo
- “Reasonableness”
- No language barriers
Example Incident cont.

- Note that each has a little “dirty laundry”

- Note that each has some seemingly reasonable “excuses”
Example Incident cont.

- What are the hazards?

- Who are the employers responsible under the citation policy?
Some Hazards in Example

- Railing and Design
- Charlie Access to Site
- Charlie Training
## Employers Chart

- **Employer Identification under Citation Policy**

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# Railing and Design

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# Charlie Access to Site

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# Charlie Training

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Effects of PSM

- How does PSM Affect this Scenario?
  - Increased Citable Hazards
  - Increased Duties for Controlling Employers
Increased hazards and duties from PSM

(multiplied by)

Increased employers from citation policy

(equals)

More OSHA citations\(^1\)

1: That Survive Challenge
OSHA’s Motivation

- **Citation policy**
  - Have more employers responsible for hazards
  - Controlling employer must exercise his control

- **PSM**
  - Controlling employer must exercise his control
Civil/Legal Implications

- Typically he who has an “X” pays
- Plaintiff attorneys will try to maximize the number of “X’s” and hazards
- The more “X’s” you have, the more you pay
Recommendations

- **Training**
  - Host (controlling) employers should train employees on the requirements of the multi-employer citation policy, especially evaluating “reasonable care”
  - Host (controlling) employers should train employees on the “authority to stop work”
Recommendations cont.

- **Training**
  - Host (controlling) employers should train employees on the contract language.
  - Contractor (exposing employers) should train their employees on the multi-employer citation policy including “reasonable actions” to avoid exposure.
  - Review past site incidents involving multi-employers with regard to citation policy and PSM.
Recommendations cont.

- **Documentation**
  - “If it isn’t in writing, it didn’t happen”
  - Document inspections and warnings

- **Establish site control philosophy with regard to contractors**
  - When do you stop work?
  - “To direct or not to direct”
Recommendations cont.

- Examine your contract language
  - Indemnity Clauses are regularly defeated
  - “Additional Insured” has been more successful
- Increase use of Job Safety Analysis (JSA)
- Daily Site Closing Reports
Pending OSHA Changes

- Two bills, house and senate bills
- Increased penalties
- Decreased unclassified citations
- Felonies rather than misdemeanors for repeat willful penalties
Summary

- The combination of the OSHA PSM regulation and Multi-Employer Citation Policy leads to increased citation exposure, especially for host (controlling) employers
- Pending legislation will increase those risks
- Training and documentation will decrease those risks