

February 2016 OSHA Update
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The focus of this article is your safety program and its enforcement. But, before I get into that I would like to revisit something I have mentioned previously as the impact of it has changed. I have reported in the past that OSHA has issued a letter of interpretation (LOI) regarding the use of extension cords. When I discussed this with some clients their reaction was to “wait and see.” They took this approach because they viewed the LOI as a narrow document that would be limited to the company that requested the interpretation. Well, OSHA has spoken with actions, not words. I have been advised that the Columbus Area Office of OSHA has recently issued citations to an Indiana subcontractor and an Ohio contractor for violations of 29 CFR 1926.403(b)(2). This section requires that all electrical equipment shall be used in accordance with all labels. If you will recall the LOI stated that if extension cords were labeled so as to prohibit their being used in series with other extension cords, OSHA would cite employers for not complying with those labeling requirements. So, I believe we now have evidence that OSHA is not restricting enforcement of this standard and/or the LOI to just the company that asked the question, but to all employers.

There is one other point of clarification arising out of the preceding paragraph; some employers believe, for some reason, that if they are based in a state controlled OSHA state, they cannot be cited by federal OSHA, even if they travel to work to a federal OSA state. This is NOT true. You, as an employer, fall under the jurisdiction of the state in which you are working. So, if you are in Indiana, as state OSHA state, and travel to Kentucky, another state OSHA state, you fall under the jurisdiction of Kentucky OSHA while working in Kentucky. The same is true if you travel to a state in which federal OSHA has jurisdiction.

In the January 15, 2016 issue of the OSHA Newsletter, OSHA reported that a roofing contractor had been cited as a serial violator in Concord, NH. The company, High & Dry Roofing had been inspected by OSHA and found to be in violation of the fall protection standards for failure to provide fall protection to employees working at heights over 20-feet. OSHA returned to the jobsite two days later and found the same hazards. As a result High & Dry was issued two willful violations of workplace safety standards. According to the article, High & Dry now faces \$152,4600 in fines. This appears to have been a jobsite “wall to wall” inspection. In addition to the fall protection violations citations were also issued for (1) a lack of hard hats and safety glasses for workers; (2) failing to guard the operating parts of a compressor from contact; (3) having a scaffold too close to a 240-volt line; (4) using ladders on scaffold platforms; and (5) failing to provide fall protection training. These are not all of the items, but they do represent the range of items included in the citations.

I bring this to your attention because you need to be aware of the exposures your face as a contractor. Think about how many jobs you would need to complete to secure

the profits necessary to offset these fines. I know you are thinking, well “I can negotiate the numbers down.” That may well be possible, but remember, there is always a point below which the enforcement agency will not go. In addition, remember, after August 1st of this year fines go up by 82%; so if issued after August 1st these fines would be \$277,477. In addition, there are other costs which may be in play in such a situation.

I provide this example to point out the necessity for you to have your safety program up to date and up to full compliance. You need to look at your safety program from different perspectives. First, are you providing all the safeguards, PPE, programs and training necessary to ensure the safety of your employees? Second, are you communicating all the requirements of your program to all of your employees effectively? Third, are you auditing compliance with your safety program on at least a daily basis and recording the audits? Fourth, are you effectively enforcing ALL components of your safety program objectively? And, finally, have you trained your employees to recognize hazards that might appear on the jobsite and how they should respond to those hazards?

If you have not done all of these things, your company is at risk of receiving high fines following any OSHA compliance inspection. You need to be using the best materials and installation techniques available and you need to be producing the highest quality product possible, but all of that will not do you any good if you are not able to get past the pre-qual phase of the bid process because of an unacceptable safety record. You need ALL of the components set out in the preceding paragraph to have a complete and compliant safety program and to avoid significant fines in the case of an OSHA compliance inspection.