



OSHA Information Memo

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Electronic Dispatch

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MULTI-EMPLOYER WORKSITE CITATION POLICY AGAIN UNDER REVIEW

For more than thirty years, the Labor Department has cited multiple employers for safety violations on construction sites even when an employer had no employees exposed to the safety hazard, under the multi-employer worksite citation policy. Using this policy, the Labor Department cites the employer who *creates* a safety hazard in violation of the construction safety standards, as well as an employer who *exposes* its employees to the hazard or who has *control* of the worksite and thus has the power to correct the hazard.

In April 2007, the Occupational Safety and Health Review Commission decided *Secretary of Labor v. Summit Contractors, Inc.*, OSHRC No. 03-1622, a case in which the employer, Summit Contractors, had challenged the Labor Department's multi-employer worksite citation policy. Summit, the controlling employer, had hired subcontractors to perform certain work on the construction project it had undertaken; one subcontractor created the conditions in violation of the standard. When Summit was cited by the Labor Department, it defended against the alleged violation by asserting that it had no employees exposed to the hazard and the multi-employer citation policy was inconsistent with, and, in excess of, the statutory obligation to safeguard its own employees.

In a two to one decision, the Review Commission agreed with Summit, but, the Labor Department petitioned for review of the decision. The 8th Circuit Court of Appeals ruled, in a two to one decision, on February 26, 2009, that the Review Commission had erred in its interpretation of the statute and regulations. The court concluded that the Labor Department had the authority to develop and enforce the multi-employer worksite citation policy.

The 8th Circuit majority opinion, however, discussed several other Courts of Appeals opinions questioning the Labor Department's application of the multi-employer citation policy to controlling employers. In addition, one of the three judges on the 8th Circuit panel filed a well-reasoned dissenting opinion supporting the employer's defense.

While the final result in the *Summit* case is not in doubt, the multi-employer issue does not appear likely to go away. In fact, this issue may ultimately be resolved by the U.S. Supreme Court.

In the meantime, employers on construction projects are well-advised to keep their employees protected from safety hazards by enforcing the standards where their employees are working. If other employers create hazards, an employer should report the hazards to the general contractor, or other entity responsible for safety compliance, so the hazards may be corrected.

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