



Criminal Charges For OSHA Violations? State Prosecutors Are Taking Increased Interest

Insights

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Most employers are aware that the Occupational Safety and Health Administration can issue monetary penalties for health and safety violations occurring in the workplace. Many employers also know that in particular circumstances, OSHA can issue criminal sanctions. However, what employers may not know is that OSHA has also been referring workplace safety violations to state district attorney offices in fatality cases. A district attorney then reviews the case to determine if a company owner should be individually charged with manslaughter or other state criminal violations.

Under the OSH Act, the agency can bring criminal charges against an employer for:

- Willful violations causing an employee's death;
- Providing advance notice of an OSHA inspection; and
- Providing false statements on a document required by the Act.

But the criminal penalties associated with these violations, found in Section 17(e) of the OSH Act, are less severe than the potential penalties available to a district attorney under state law. They include a fine of not more than \$10,000 or imprisonment for not more than six months, or by both for the first offense.

Meanwhile, a local district attorney has the full range of misdemeanor or felony charges available with which to charge an individual owner of a company. For example, in August of this year, the district attorney in Grandby, Colorado charged the owner of ContractOne with manslaughter charges for the death of his employee that occurred the previous summer while working in a trench. The underlying OSHA violations were previously settled for one willful, 10 serious, and one other-than-serious citation according to OSHA's website. By definition, a willful citation means deliberate indifference to the facts or law, of which the employer has actual knowledge or actual knowledge of significant risks coupled knowledge of the necessary steps to avoid the risks.

This is not the first time that OSHA has worked with a local district attorney to have state criminal charges brought after a workplace fatality. In 2015, Harco Construction's owner was found guilty of manslaughter, criminally negligent homicide, and reckless endangerment in New York after an employee worksite fatality. In Georgia in 2014, Film Allman LLC's director pled guilty and was

sentenced to 10 years in prison after a worksite fatality; the first assistant director and executive producer each received 10 years' probation for involuntary manslaughter and criminal trespass.

Any such case turns on specific factual scenarios, but each highlight OSHA's broad enforcement capabilities after a workplace fatality. Supervisors and other company agents must understand their individual responsibilities when addressing workplace safety issues. In the unfortunate circumstances of a workplace fatality, key management personnel should consult with legal counsel prior to entering into settlements with OSHA in order to fully understand the risk of any potential future criminal charges.

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