



Heads up Texans ... OSHA is Gunning for You

Insights

7.23.15

I don't believe in coincidences, so when in the same day, I see pronouncements from OSHA, EHS-Today and BNA about why Texas is experiencing "so many" fatalities, I assume that Fed-OSHA is sighting on Texas contractors. Let's be clear, I agree with a serious self-critical analysis of workplace fatalities in Texas. One is too many. However, politics always affects regulatory and enforcement efforts and Texas is not one of the Administration's favorite states. So, I want my Texas contacts to focus on BOTH preventing injuries and fatalities AND preparing for any OSHA strict scrutiny of OSHA compliance. Remember ... they are not always the same. One can be in compliance with OSHA Standards and have an unsafe culture. Similarly, one can establish an effective safety culture and miss certain picky OSHA requirements. One must consider both efforts.

And folks ... please make sure that you're including temporary employees in your safety efforts. Hazards do not care about an employee's status, and nothing irritates OSHA more than failing to provide the same safety protections to "temps" as to full time employees.

So, here's excerpts from today's EHS Today ...

EHS Today Asks OSHA Chief: What's Up in Texas?

Everything's bigger in Texas... including recent OSHA fines for safety violations.

Jul 23, 2015 [Sandy Smith](#)

Two recent OSHA investigations into Houston-area construction worksite incidents that resulted in serious injuries for employees led Assistant Secretary of Labor Dr. David Michaels to hold a press conference to comment on them.

"Texas has more fatalities in the construction industry than any other state," Michaels noted. The two cases – one that involved a worker fall from height and one that involved a trench collapse – had some significant things in common, he added.

"In both cases, the employers knew what to do but didn't do it and the workers paid the price for it," said Michaels.

And BBNA printed a similar discussion on July 22, entitled: *Michaels Blasts Texas Contractors for Violations*, explaining that "OSHA administrator David Michaels used the announcement of two

large proposed penalties against Texas construction companies on July 22 as a platform to call for employers to improve safety practices and follow the agency's new injury reporting rule."

From OSHA's website:

Trench collapse seriously injures worker, leads to \$424K fine for employer
Hassell Construction cited for egregious safety violations in Richmond, Texas collapse

HOUSTON - One minute he was working in the 8-foot trench below ground. The next, he was being buried in it. His co-workers came to his rescue, digging him out with their bare hands. Moments after they pulled the injured man to safety, the unprotected trench collapsed again. His injuries were serious and led to his hospitalization.

The man's Houston-area employer, Hassell Construction Co. Inc. knew the Richmond, Texas excavation site was dangerous, but failed to protect its workers.

Today, the U.S. Department of Labor's Occupational Safety and Health Administration cited Hassell Construction for 16 safety violations, including six egregious willful violations for failing to protect workers inside an excavation from a cave-in. The company faces penalties totaling \$423,900.

"For more than 2,500 years, man has known how to prevent deadly trench collapses. It is absolutely unacceptable that employers continue to endanger the lives of workers in trenches," said Assistant Secretary of Labor for Occupational Safety and Health Dr. David Michaels. "An employer is responsible for providing a workplace safe from hazards. Hassell Construction failed to do that in this case."

In addition to the willful violations, Hassell was cited for nine serious violations, including failing to remove debris from the edge of the excavation. The company also did not provide a safe means to get in and out of the excavation for workers or conduct atmospheric testing inside excavations after a sewer leak.

"Trench cave-ins are preventable," said John Hermanson, OSHA's regional administrator in Dallas. "There are long-established, basic precautions. They're not new, and they're not secret. Hassell Construction knew its trenches weren't safe, but still put its workers in harm's way."

OSHA has placed the company in its Severe Violator Enforcement Program. The program concentrates resources on inspecting employers who have demonstrated indifference towards creating a safe and healthy workplace by committing willful or repeated violations, and/or failing to abate known hazards. It also mandates follow-up inspections to ensure compliance with the law.

The citations Hassell Construction received are available [here](#)*.

Hassell Construction employs about 150 employees to help construct water and sewer lines in the Houston area. Its workers compensation insurance carrier is Liberty Mutual. The employer has 15 business days from receipt of its citations to comply, request an informal conference with OSHA's Houston South area director, or contest the citations and penalties before the independent Occupational Safety and Health Review Commission.

And

July 22, 2015

**Texas worker injured after being denied safety equipment; employers cited
*OSHA fines Cotton Commercial USA and Gardia Construction more than \$367K***

HOUSTON - Despite his request for a safety harness, a temporary worker without fall protection on a roof later fell 12 feet through the roof. His fall resulted in his hospitalization with fractured arms and severe contusions.

The employer, Cotton Commercial USA Inc. in Katy, Texas, waited three days to report the injury, an investigation by the U.S. Department of Labor's Occupational Safety and Health Administration found. Federal law requires employers to report such incidents within 24 hours.

OSHA today fined Cotton Commercial \$362,500 for seven safety violations, including one willful and four willful egregious. The violations include failing to provide fall protection for four workers, failure to promptly report the hospitalization of an employee resulting from a workplace incident, and not training employees in the use of fall protection and ladders. Cotton Commercial citations are available here*.

Gardia Construction, which provided the laborers to Cotton Commercial, received a citation for one serious violation and a fine of \$4,900, for failing to conduct frequent and regular inspections of the job site where its laborers worked. The Gardia citations are available here*.

"Falls kill workers, but they are preventable," said Assistant Secretary for Occupational Safety and Health Dr. David Michaels. "Cotton Commercial denied its workers the safety equipment they are required to provide, and the company intentionally waited several days to report the incident and misled OSHA's inspectors."

Staffing agencies and host employers are jointly responsible for maintaining a safe work environment for temporary workers. This includes ensuring that OSHA's training, hazard communications and record-keeping requirements are fulfilled. And for construction workers, this responsibility includes ensuring that frequent and regular inspections of worksites are conducted.

"Cotton Commercial was well aware of how to prevent safety hazard and, in fact, on the following day Cotton made sure all workers were provided with the required safety equipment. It shouldn't

have to take a serious injury for a company to comply with the law," said OSHA Regional Administrator John Hermanson.

Cotton Commercial employs about 227 workers and operates throughout the U.S. The company provides remediation services for commercial and residential structures damaged from disasters. At the time of the accident, Texas Mutual provided company employees with workers compensation insurance. Its current provider is Affordable Insurance of Texas. Gardia Construction, located in Gretna, La., employs about 80 workers and provides labor to Cotton Commercial. Gardia does not carry workers compensation insurance.

Both employers have 15 business days from receipt of its citations to comply, request an informal conference with OSHA's Houston South area director, or contest the citations and penalties before the independent Occupational Safety and Health Review Commission.

To ask questions, obtain compliance assistance, file a complaint, or report amputations, eye loss, workplace hospitalizations, fatalities or situations posing imminent danger to workers, the public should call OSHA's toll-free hotline at 800-321-OSHA (6742) or the agency's Houston South office at 281-286-0583 or its Houston North office at 281-591-2438.

And

July 16, 2015

Workers risked dangerous falls at Shenandoah, Texas, worksite
OSHA cites employers Gate Precast Co. and Trueblue Inc.; fines total \$74K

Employer name: Gate Precast Co. and Trueblue Inc., doing business as Labor Ready

Site: Shenandoah, Texas

Date citations issued: The U.S. Department of Labor's Occupational Safety and Health Administration cited the employers on July 16, for exposing workers to fall hazards at a construction site.

Investigation findings: OSHA's Houston North Area Office cited Gate Precast Co. for four serious and one repeat violation. The serious violations include exposing workers to struck-by hazards, using a kinked wire rope to lift a load, failing to protect wire ropes from damage, and exposing employees to impalement. The repeat violation was for failing to protect employees and six temporary workers from fall hazards. Trueblue provided Gate Precast with six temporary workers and received two citations, for exposing workers to fall and impalement hazards, at the job site.

Proposed Penalties: OSHA has proposed \$65,000 in fines for Gate Precast Co. and \$9,000 for Trueblue.

Citations: http://www.osha.gov/ooc/citations/TrueblueIncLaborReady_1064765_0716_15.pdf* and http://www.osha.gov/ooc/citations/GatePrecastCompany_1061067_0716_15.pdf*

Quote: "Falls from ladders, scaffolds and roofs are the leading cause of death in the construction industry, but these deaths can be prevented by planning, using the correct equipment and training the workers," said Joann Figueroa, area director in OSHA's Houston North Area Office.

Related People



Howard A. Mavity
Partner
404.240.4204
Email