



Honesty Never Goes Out of Style

Insights

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Would you like to see this statement about you and your business in the local papers?

"Corporation Sentenced for Safety Violations That Caused Employee Death."

I didn't think so. The referenced case reminds us that an employer is unlikely to go to jail for even a fatality associated with willful OSHA violations but lying to the Feds, fabricating evidence and asking employees to lie for you will land you in jail ... and rightly so. Read the excerpts below from the US Attorney's statement:

A Montana corporation specializing in residential and commercial asphalt paving services was sentenced today for violating of a safety standard that caused the death of one of its employees.

MR Asphalt and its President, Martin Romano, were sentenced to three years' probation and \$7,500 in fines. In addition, \$12,500 was ordered to the victim's spouse.

Assistant U.S. Attorney Kris McLean told the court that on September 13, 2012, the MR Asphalt employee was checking the asphalt tank located thirteen (13) feet from ground level. Another employee found the victim lying face down on the ground next to the asphalt tank. Police reports and medical records confirm the victim's death was consistent with a fall from the asphalt tank. The investigation specifically noted the lack of guardrails or handrails on the asphalt tank, as well as the

After the incident, Martin Romano met with MR Asphalt employees and asked them to falsify safety records, specifically to back date records of safety meetings that did not occur. In addition, a safety harness and lanyard were placed in the control shack after the incident, and Romano told others that the equipment was always present at the worksite. The investigation revealed that no one had ever been trained or certified in fall protection or fall arrest systems, or that safety equipment was ever available prior to the fatal fall.

Further detail was alleged [in the local paper](#):

Assistant U.S. Attorney Kris McLean told the court that Romano met with employees after Irby's death and asked them to back-date records of safety meetings that didn't occur, according to a statement from the Montana U.S. Attorney's office.

"In addition, a safety harness and lanyard were placed in the control shack after the incident, and Romano told others that the equipment was always present at the worksite," prosecutors said. "The investigation revealed that no one had ever been trained or certified in fall protection or fall arrest systems, or that safety equipment was ever available prior to the fatal fall."

We really don't need to further analyze this case, but here are a few suggestions:

1. Don't be cheap in your response to an employee fatality. Get experienced counsel and follow their instructions.
2. Make sure managers and supervisors in far flung locations know that the Company is serious about not lying to the government or in any way fabricating evidence.
3. When a fatality occurs, obtain counsel about when a site can be cleaned and restored to service based on OSHA and law enforcement involvement.
4. In any case, obtain counsel about the preservation of documents, especially emails and electronic communications.
5. Obtain legal guidance in evaluating whether materials are protected and may not be responsive to an OSHA request or may be protected.
6. Create a culture where being honest and doing the right thing is practiced from the CEO's office on down. No business is too big or too sophisticated to emphasize these basic truths to employees and managers.

Related People



Howard A. Mavity

Partner

404.240.4204

Email