Business Owner and Job Foreman Each Go To Jail For Worker's Death

Insights
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The owner and the foreman of a roofing company have each been sentenced to one year jail terms because they did not put fall protection measures in place that would have prevented a 39 year old employee from falling to his death from a four-story apartment building in San Francisco.

The Cal/OSHA investigation into the details of the employee's death also determined that none of the roofing crew were wearing fall protection gear and there were no barriers or scaffolds in place to provide fall protection. Investigators also found that workers on the job had received no safety training and the company had no safety policies.

San Francisco District Attorney George Gascon explained his decision to prosecute the two individuals as follows: "The prosecution and conviction of these two defendants whose blatant disregard for their worker's safety resulted in his untimely and preventable death sends a loud and clear message to anyone doing business in our city."

What Employers May Come To Expect
We believe the message communicated by the jail sentences will not be limited to San Francisco county limits.

California Labor Code Section 6425 authorizes significant penalties for employers' managers as well as supervisors who have responsibility for the direction, management, control or custody of others where there is a willful violation of any occupational safety or health standard or order which results in the death of any employee. For a first violation the statute authorizes a penalty of a one year jail sentence in county jail as well as a fine of up to $100,000. These same penalties also apply in non-fatal accidents where there is permanent or prolonged impairment of any employee that was caused by a willful violation of occupational safety or health standards.

While not every serious injury or death will result in criminal prosecution, this could well be a bellwether action to usher in a new and more aggressive enforcement environment. If one can believe public statements of policy, criminal sanctions are definitely a viable alternative in the mind of Cal/OSHA Chief Ellen Widess: "Holding employers accountable is necessary, especially in a situation where such a tragedy is preventable. This is a case where an employer and supervisor ignored basic safety and health requirements which resulted in the death of a worker. Cal/OSHA will

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hold employers like this accountable, as is evidenced by this criminal conviction.

What Employers Should Do

Employee safety is similar to motherhood in that it is impossible to be against it. There is simply no excuse for blatant violations which cause irreparable harm to employees and no tolerance for employee deaths which result from willful violations of safety standards. Where employers willfully fail in their manifest duties and where those failures result in employee deaths or permanent serious impairment, we believe that there will be increasing willingness on the part of district attorneys throughout the state to penalize those willfully negligent employers as well as similarly negligent individual supervisors. Labor Code Section 6425 is not a new statute, but it is a statute with newly sharpened teeth.

It is time for every California employer to carefully review its safety program as well as its safety procedures, policies, and employee training to ensure that all appropriate resources are being focused on the protection of the health and welfare of its employees.

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