

...the Pursuit of Continuous Improvement

Legal Eagle: OSHA's Multi-Employer Policy



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A Multi-Employer Is . . .



OSHA 1926.16

More than one employer working
on a construction project.

OWNER

County Courthouse

Architect & Interior Designer Consultants
(contract with owner)

Engineering Design Consultants
(contract with owner)

Construction Manager
(contract with owner)

General Contractor 1 (GC1)
Site Work & Building Foundations
(contract with owner)

General Contractor 2
Building Structure & Shell
Weather Proofing of Building
(contract with owner)

General Contractor 3
Building Interior
Layout & Finish Work of Interior
(contract with owner)

Subcontractor
Concrete Foundation
(contract with GC1)

Subcontractor
Re-steel & Formwork Foundations
(contract with GC1)

Subcontractor
Utilities
(contract with GC1)

Subcontractor
Landscaping
(contract with GC1)

Subcontractor
Steel Erector

Subcontractor
Masonry Wall Contractor

Subcontractor
Utilities to Office Layout & Interior

Subcontractor
Interior Walls & Office Finishes

Subcontractor
Interior Lighting & HVAC

Sub-subcontractor
Plumbing the Concrete
(plumber truck)

Sub-subcontractor
Excavator for Foundations

Sub-subcontractor
Electrical (main power)

Sub-subcontractor
Waste Water

Sub-subcontractor
Potable Water

Sub-subcontractor
Storm Water

Sub-subcontractor
Security systems

Sub-subcontractor
Communication Systems

Sub-subcontractor
Flat Sidewalk Concrete Work

Sub-subcontractor
Stone Walls

Sub-subcontractor
Flowers

Sub-subcontractor
Outside Lighting

Sub-subcontractor
Construction Cranes & Operators

Sub-subcontractor
Mast Climber Erectors

Sub-subcontractor
Mast Climber Leaser/Distributor

Sub-subcontractor
Office & Interior Electrical Power Systems

Sub-subcontractor
Plumbing

Sub-subcontractor
Security Systems

Sub-subcontractor
Communication Systems

Sub-subcontractor
Drywall & Office Layout

Sub-subcontractor
Interior Finishes

Sub-subcontractor
Interior Lighting

Sub-subcontractor
Office HVAC

Multi-Employer Regulations

ANSI A10.33

- *Safety & Health Requirements for Multi-Employer Projects*

ANSI A10.34

- *Protection of the Public on or Adjacent to Construction Sites*

ANSI A10.38

- *Basic Elements of a Program to Provide a Safe & Healthful Work Environment*

ANSI A10.39

- *Construction Safety & Health Audit Program*

ANSI A92.9

- *Protection of the Public On or Adjacent to Construction Sites*

ANSI A92.10

- *Protection of the Public on or Adjacent to Construction Sites*

OSHA 1926.16

- *Rules of Construction*

OSHA CPL 02-00.124

- *Multi-Employer Citation Policy 12/10/99*



4 Types of Employer

OSHA Directive CPL 02-00-124

1. CONTROLLING
2. CREATING
3. EXPOSING
4. CORRECTING



1. Controlling

One entity (project owner, A/E firm, general contractor, construction manager, subcontractor) in charge of the project.



Controlling Contractor:

In charge of ***the big picture*** concerning project safety
NOT the individual subcontractor's safety duties.

Controlling



Establishes safety requirements to be followed by their subcontractors.

OSHA 1926.16
ANSI A10.33

Controlling

OSHA and ANSI established a duty to exercise ***normal and reasonable care*** to detect and prevent safety hazards on the project worksite area.



Established Criteria

OSHA Directive CPL 02-00-124

Control is established by either . . .

1. Signed construction contract between owner and controlling contractor; OR,
2. Exercising *control in practice* at the worksite.

Control in Practice Example: A small General Contractor hires a large specialty concrete contractor. If the specialty contractor controls beyond their work scope, their actions may establish them as the controlling contractor.

Controlling Employer Reasonable Care Safety Responsibilities

OSHA 1926.16, CPL 02-00-124, ANSI A10.33

- Create a specific worksite safety program for their subcontractors
- Enforce their specific worksite safety program for their subcontractors
- Authority to correct safety hazards
- Competent Person at the project worksite



Controlling Employer Reasonable Care Safety Responsibilities

OSHA 1926.16; Directive CPL 02-00-124, ANSI 10.33



In their workplace:

- Conduct frequent and regular weekly safety inspections
- Enforce prompt correction of recognized and foreseeable hazards
- Conduct frequent and regular weekly safety meetings
- Enforce OSHA compliance in their workplace area



Reasonable Care Factors

- Project scale, type and speed of construction and the frequency of the type of hazards
- Frequency of safety meetings:
 - Subcontractors foreman and supervisors
 - Weekly to every other week
- Frequency of inspections:
 - Subcontractor safety history and safety experience
 - Subcontractor's level of safety experience and safe means and methods



Specialty Contractor's Superior Safety Knowledge and Reasonable Care Safety Responsibilities

- OSHA does not require the controlling contractor to have the same trade safety knowledge or means and method expertise as the specialty employer it has hired
- OSHA does not require the controlling contractor to safety inspect for hazards in the specialty contractor's work space area as frequently as the specialty contractor; OSHA requires the controlling contractor to perform this inspection weekly to monthly versus daily

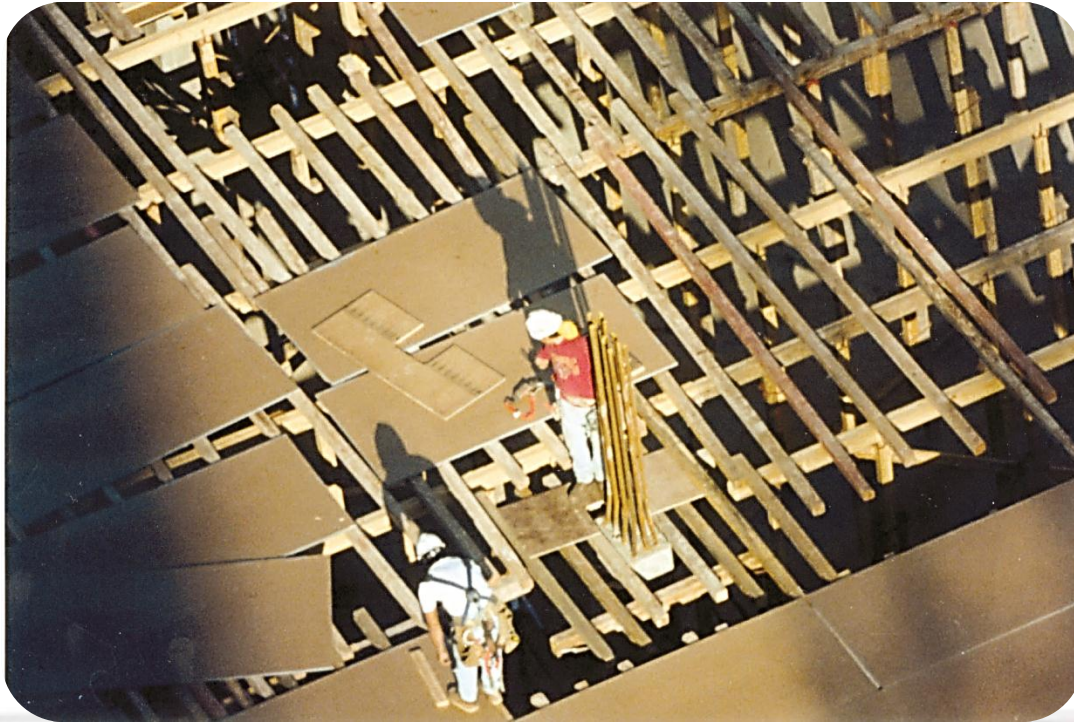
Controlling Employer

Evaluating Reasonable Care

- Contract requirements
- Contractor's actions
- Frequent and regular week-to-two week safety inspections
- Provides an effective system to enforce the prompt correction of hazards—recognized or foreseeable
- Frequent and regular weekly safety meetings with subcontractors' foreman
- Competent Person at the project worksite

2. Creating Employer

Employer that creates safety hazards on the project worksite for another employer's employees.



Duties of Creating Employer

- Create a specific worksite safety program for their employees
- Enforce the controlling employer's site-specific safety program for the worksite
- Correct their safety hazards
- Competent Person at their workplace area

Creating

Evaluating Reasonable Care

- Contract requirements
- Contractor compliance
- Frequent and regular daily site inspections
- Provides effective system to enforce the prompt correction of hazards—recognized or foreseeable
- Frequent and regular weekly safety meetings
- Competent Person at their workplace areas

3. Exposing Employer

Employer whose employees are exposed to the safety hazard created by other contractors.



Duties of Exposing Employer

- Create a specific worksite safety program for their employees
- Enforce the controlling employer's site-specific safety program
- Authority to correct their safety hazards
- Competent Person at their workplace area

Exposing

Evaluating Reasonable Care

- Contract requirements
- Contract compliance
- Frequent and regular daily safety inspections
- Provide effective system to enforce the prompt correction of hazards—recognized or foreseeable
- Frequent and regular weekly safety meetings
- Competent Person at their workplace area



4. Correcting Employer

Employer responsible for correcting a hazard.



Duties of Correcting Employer

- Create a specific worksite safety program for their employees
- Enforce the controlling employer's site-specific safety program
- Authority to correct their safety hazards
- Competent Person at their workplace area

Correcting Employer

Evaluating Reasonable Care

- Contract requirements
- Contract compliance
- Frequent and periodic daily safety inspections
- Provide effective system to enforce the prompt correction of hazards—recognized or foreseeable
- Frequent and regular weekly safety meetings
- Competent Person at their workplace area

Multi-Employer Responsibilities for . . .

- Project Owner
- Construction Manager
- General Contractor
- Subcontractor
- Specialty Contractor



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Sub-subcontractor
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Responsibilities of the . . .

Project Owner

- Provide all the engineering design drawings and specifications to the general contractors
- Directly hire the construction manager
- Directly hire the general contractors
 - General contractors hire their subcontractors
 - Subcontractors hire their sub-subcontractors

Responsibilities of the . . .

Construction Manager

- Has no control over the general contractor or subcontractors and has no control over the project workplace
- Is the owner's representative until the project is completed
- Observes that the work is being performed and informs the owner of the work progress
- Has progress meetings with the owner and general contractor
- Has no control over nor responsibility for the construction project's means and methods

Responsibilities of the . . .

General Contractor

- Perform constructability reviews of the construction details
- Provide the overall construction planning and scheduling, construction control schedule and construction safety program administration
- Coordinate the construction workplace activities with the other independent contractors
- Be solely responsible for and have control over the construction means and methods
- Only responsible to the owner for acts and omissions of persons performing portions of the work under a contract with the general contractor

Responsibilities of the . . .

Subcontractor

- Perform constructability reviews of the construction details
- Provide their work scope construction planning and scheduling, construction control schedule and construction safety program administration
- Provide construction workplace activities for their work scope of the project construction
- Be solely responsible for and have control over their construction means and methods
- Control their project work scope portions of the work under their contract with the general contractor

Specialty Contractor

- In a Letter of Interpretation dated August 31, 1995, OSHA states that a specialty contractor is a contractor with a high degree of specialized skill and experience in performance of a specific construction work task. OSHA states that they will hold them at a higher degree of responsibility to exercise ***reasonable care*** of their industry and to provide a safe place to work for their employees
- The controlling contractor is not expected to have specialized safety knowledge in the safety means and methods of the specialty contractor

Duties of Specialty Contractor

- Create a specific worksite safety program for their employees
- Enforce the controlling employer's site-specific safety program
- Enforce policy for worksite safety program
- Authority to correct their safety hazards
- Competent Person at their workplace area

Specialty Contractor

Evaluating Reasonable Care

- Contract requirements
- Contract compliance
- Frequent and periodic daily safety inspections
- Provide effective system to enforce the prompt correction of hazards—recognized or foreseeable
- Frequent and regular weekly safety meetings
- Competent Person at their workplace area

Multiple Roles

- A creating, correcting or controlling employer will often also be an exposing employer. Consider whether the employer is an exposing employer before evaluating its status with respect to these other roles.
- Exposing, creating and controlling employers can also be correcting employers if they are authorized to correct the hazard.

OSHA's Citation Policy

The two-step process for evaluating whether more than one employer is to be cited includes:

1. Contractor employer type and role for the project.
Remember one contractor may be performing several role types.
2. Determine if the employer's actions met the responsibilities of the employer type description.

Sample Multi-Employer Concerns

Fall Protection

- Specialty Contractor hired to perform work but does not have fall protection equipment
 - *Who is responsible to provide the fall protection equipment?*
- What if an invited guest is on the site?
 - *Who is responsible to provide the fall protection equipment?*

Sample Multi-Employer Concerns

- Lack of preplanning safety/fall protection is one of the highest contributing factors to injuries and fatalities in the workplace. Although often overlooked, preplanning significantly contributes to a well-organized, safe project. (*Note: review 1926 Subpart M Preamble for preplanning information.*)

Case Study



ABC Company contracts Tucker Construction as the general contractor for a building project they need completed.

Tucker Construction hired Carpenters Inc. and Caulking Inc. as subcontractors to work on the project.

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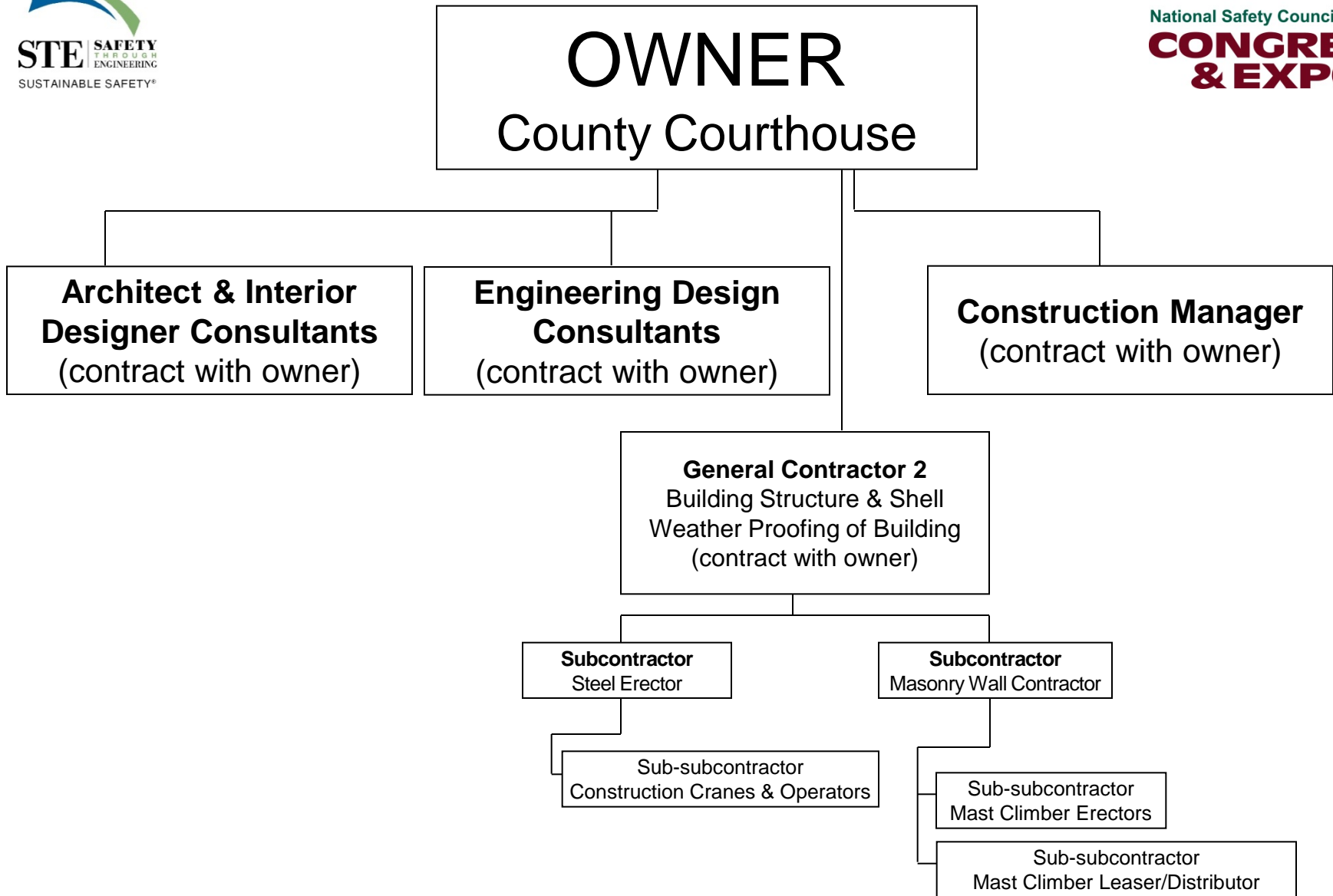
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Case Study

Caulking Inc. placed a mast climber scaffold, owned by Caulking Inc., at the job site for its use. Caulking Inc. permitted Carpenters Inc. to use the mast climber scaffold. Caulking Inc. provided training to Carpenters Inc.'s employees on the use and operation of the scaffold; however, Caulking Inc. did not provide any safety training.

Case Study

Caulking Inc.'s mast climber scaffold, which was in the complete possession and control of Carpenter's Inc. on December 23, was placed more than fourteen (14) inches away from the face of the building. Outriggers were used to place additional boards on to enable Caulking Inc.'s employees to reach the wall.



Case Study

The scaffolding did not have:

- A safe means of access because the distance between the point of access and the scaffold system was over two (2) feet.
- Guardrails and toeboards as required by OSHA. Proper guarding is needed on open-sided floors, platforms and runways.
- The scaffolding did not have independent lifelines for employees who were ascending and/or working on the scaffold.

Case Study

Jack was employed by Carpenters Inc., who used the mast climber scaffold for a number of months to move and lift wood material. He and his coworkers didn't work from the mast climber. They would load it with the needed material and raise it to the window of the floor where they were working so they could unload it through the window.

Case Study

Jack was employed by Carpenters Inc. On a December 23, with snow all around, Jack helped load the mast climber with plywood. He rode the mast climber to the 5th story window and fell from the scaffolding while trying to offload the material. He died almost instantly.

Case Study

In order to fit the plywood on the mast climber, the end guarding had been removed. The boards on the outriggers were not secured and came loose when Jack fell on them. No one from Caulking Inc. was present at the time of the accident.





Who Was the . . . ?

- Controlling Contractor/Employer

Who Was the . . . ?

- Creating Contractor/Employer?

Who Was the . . . ?

- Exposing Contractor/Employer?

Who Was the . . . ?

- Correcting Contractor/Employer?

Did These Employers Have a Safety Duty?

- Controlling?
- Creating?
- Exposing?
- Correcting?

Who did the duty belong to?

Safety Duty Violations?

- OSHA Regulations?
- ANSI Standards?

Safety Abatement Options

What could have been done to eliminate or control the hazard?

- Preplanning
- Inspections
- Training
- Adequate Vertical Lifelines

Discussion