

**\*\*CSRMA Bulletin\*\***

**Multi-Employer Regulations**

Although the Multi-Employer regulations have been in effect for several years now, many agencies still struggle with the issue of applicability. In particular, whether or not (as a non-construction agency) could they be cited and fined under the Multi-Employer regulations. This bulletin will discuss how the Multi-Employer laws (found in the California Labor Code Sections 6400, 6401, 6401.7, 6402-6404, and California Code of Regulations, Title 8, Sections 336.10 and 336.11) apply to almost every employer in the State of California.

**What is a "Multi-Employer" Worksite?**

According to CalOSHA Policy & Procedure C-1C, "A *Multi-Employer Worksite*" is any worksite, permanent or temporary, where more than one employer (and his or her employees) work, usually but not necessarily at the same time. The most common multi-employer worksites are temporary worksites at which construction activities take place. Other examples include permanent worksites at which outside contractors perform activities at that worksite, including but not necessarily limited to, construction, environmental or janitorial services, repairs and deliveries." Given this broad definition, any employer using the services of another employer is subject to Multi-Employer regulations.

**Job-Specific "Multi-Employer" clauses**

In addition to the multi-employer regulations cited above, there are various CalOSHA job-specific regulations that require the on-site/host employer to provide specific safety information to their contractor. Should a contractor employee suffer a serious injury or fatality because the host employer failed to disclose such information, the host employer could be cited as a Controlling employer under the Multi-Employer regulations. According to CalOSHA Policy & Procedure C-1C, "an employer who controls the flow of essential information at a worksite can become citable as a controlling employer by failing to deliver information to another employer when that information is necessary to prevent exposure of employees to a worksite hazard." In this situation, the on-site/host employer agency could be cited under both the multi-employer regulations and the job-specific regulation.

**Cal/OSHA Violations Admissible in Third-Party Lawsuits**

In January 2005 the California Supreme Court upheld the legislature's labor code changes and ruled that alleged violations of Cal/OSHA regulations are admissible as evidence of negligence in third-party lawsuits. The ruling means that Cal/OSHA regulations can be entered into evidence to prove that a defendant was at fault in an injury case - be it a controlling employer or a homeowner who lends a defective power tool to a neighbor

The ban on use of Cal/OSHA regulations in third-party actions had been in place since 1971 with the creation of the OSHA Act, in which the Legislature enacted 6304, creating an exception to common law. Until 1971, the Supreme Court pointed out, California worker safety provisions were "routinely" admitted in workplace negligence actions to prove a "standard of care," and violations of safety regulations were treated as negligence.

AB 1127 revised the 6304.5 language, which now states, "It is the intent of the Legislature that the provisions of this division and the occupational safety and health standards and orders promulgated under this code, are applicable to proceedings against employers for the exclusive purpose of maintaining and enforcing employee safety."

Because of the sweeping interpretation, some in the industry are concerned of the chilling effect the ruling will have on interaction between safety professionals and management. Loss professionals are supposed to document safety violations, not provide opportunities for people to sue.

This key change to the Labor Code under AB 1127 is also likely to affect the insurance rates paid by businesses and consumers as trial attorneys become more and more familiar with the uses of this the decision in a variety of types of cases.

Below are activities often performed by public agencies that contain enforceable multi-employer components.

***For More Information, Please Contact David Patzer, CSRMA Risk Control Advisor at 707.373.9709 or at [losscontrol@sbcglobal.net](mailto:losscontrol@sbcglobal.net)***

<b>The Activity</b>	<b>The Requirement(s)</b>
<p data-bbox="110 205 378 296"><b>The Control of Hazardous Energy . . . (Lockout/Tagout)</b></p> <p data-bbox="110 323 253 386">CCR Title 8 § 3314(j)</p>	<p data-bbox="410 205 1511 262">Whenever outside servicing personnel are to be engaged in activities covered by this section, the on-site employer's lockout or tagout procedures shall be followed.</p>
<p data-bbox="110 480 321 600"><b>Process Safety Management . . .</b> CCR Title 8 §5189(h)</p>	<p data-bbox="410 480 719 508">The [host] employer shall:</p> <ul data-bbox="410 514 1511 726" style="list-style-type: none"> <li>• Inform contractors performing work on, or near, a process of the known potential fire, explosion or toxic release hazards related to the contractor's work and the process, and require that contractors have trained their employees to a level adequate to safely perform their job.</li> <li>• Inform contractors of any applicable safety rules of the facility, and assure that the contractors have so informed their employees.</li> <li>• Explain to contractors the provisions of the their emergency action plan</li> </ul>
<p data-bbox="110 747 318 804"><b>Confined Space Entry</b></p> <p data-bbox="110 867 261 930">CCR Title 8 § 5157(c)(8)</p>	<p data-bbox="410 747 1511 835">When an employer (host employer) arranges to have employees of another employer (contractor) perform work that involves permit space entry or confined space entries covered by sections 5158 [Other Confined Space Operation] the host employer shall:</p> <ul data-bbox="410 842 1511 1150" style="list-style-type: none"> <li>• Inform the contractor that the workplace contains permit spaces and that permit space entry is allowed only through compliance with a permit space program.</li> <li>• Apprise the contractor what makes the space a permitted confined space. This includes known elements, hazards, and host employer's working experience and knowledge of the space.</li> <li>• Apprise the contractor of any precautions or procedures that the host employer has implemented to protect their own employees.</li> <li>• Coordinate entry operations if both host employer employees and contractor employees will be entering and working in or a near permit space.</li> <li>• Debrief the contractor at the conclusion of the entry operations.</li> </ul>
<p data-bbox="110 1173 318 1293"><b>Hazard Communication</b> CCR Title 8 § 5194(e)(2)</p>	<p data-bbox="410 1173 1511 1293">In multi-employer workplaces, the written hazard communication program shall include the methods employers will use to inform any employers sharing the same work area of hazardous substances to which their employees may be exposed while performing their work, and any suggestions for appropriate protective measures, including the following:</p> <ul data-bbox="410 1299 1511 1482" style="list-style-type: none"> <li>• Methods the [host] employer will use to provide the other employer(s) with access to MSDS's for hazardous substances their employees may be exposed to</li> <li>• The methods the [host] employer will use to inform the other employer(s) of any precautionary measures that need to be taken under normal and emergency conditions</li> <li>• The methods the [host] employer will use to inform the other employers(s) of the labeling system used in the [host employers'] workplace</li> </ul>
<p data-bbox="110 1509 337 1629"><b>Asbestos Related Work</b> CCR Title 8 § 341.11</p>	<p data-bbox="410 1509 1511 1713">The Employer shall conduct a safety conference prior to the commencement of any asbestos-related work subject to the registration and notification requirements of this article. The safety conference shall include representatives of the <u>owner</u> or contracting agency, the <u>contractor</u>, the employer, employees, and employee representatives. The safety conference shall include a discussion of employer's safety program and such means, methods, devices, processes, practices, conditions, or operations as the employer intends to utilize in providing a safe and healthful place of employment.</p>

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