A Formal Safety Program

Setting Up an Effective Safety Program is Good For Any Firm . . . And Helps With OSHA

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OSHA has been often criticized in past years for all the paper work that it generates, much of it needlessly. Most feel that a written safety program is just another piece of useless paper and is not really an area where an employer can be “caught.”

Unfortunately, this common assumption could not be further from the truth. First of all, 29 C.F.R. Sec. 1926.21(b)(2) does require each employer to “instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment . . . .” While this regulation does not by its terms mandate a written safety program and policies, and while no one, to our knowledge, has actually been fined for violating this regulation, its existence does render an employer subject to citation if no effort whatsoever is made to educate employees on safety, and its existence would tend to make a judge believe an employer was acting in bad faith if it were brought to the judge’s attention that the employer had no safety program addressed to the requirements of this regulation.

Further, if an employer is unlucky enough to receive a citation which he contests, for whatever reasons, the absence or the existence of a formal safety program and written policies can often have an effect on the outcome of the contest proceeding.

For instance, if an employer is defending a citation on the basis that an employee disobeyed company policy when he committed an OSHA violation, or the employee acted in contravention of all known standards of conduct in the particular industry in committing an OSHA violation, the Review Commission and courts have held that in order for the employer to prove this as a defense, he must also show that this policy or standard of conduct which the employee has violated has been clearly communicated to this and all other employees, and employees are and have been subject to specific discipline for violation of company policies.

Obviously, the existence of a written safety program and written policies will go a long way towards convincing the courts that an employer has effectively conveyed this information to his employees, and conversely, the lack of a written program will practically convince a judge that an employer’s safety policies are ineffectively communicated and ineffectively enforced.

This same problem can arise in the situation where a subcontractor or even a general contractor is cited for a violation which was either caused by or is in the exclusive control of another contractor on the construction site.

The Review Commission has held that the subcontractor, in those types of cases, has a good defense to the citation, only if it can also show that it did whatever else was available to protect its employees from the hazard up until the time it was abated by the responsible contractor.

In these circumstances, it can be valuable to show a Commission judge a substantial safety program which is intended to guide employees in these types of circumstances as to what actions they should take to protect themselves from hazards which cannot be abated.

Finally, in cases in which citations are being contested on the grounds that the means of abatement specified by OSHA are not feasible, the Commission will often look to see whether the employer has an effective and all-encompassing safety program which would afford the employees some protection, even if the infeasible means of compliance were not achieved.

To be effective in all of these circumstances, a good safety program must include the naming of at least one person company-wide as a safety director, who has authority to direct actions to be taken on the job site to correct unsafe conditions, and preferably also has the authority to directly discipline, by reprimand, suspension, or termination, any employee in violation of the company safety program.

The program should also include specific directions to company supervisors and foremen in implementing company safety policies and OSHA regulations. Finally, the program should include specific, written policies patterned after OSHA regulations and made directly applicable to the types of conditions that would be found in the particular employer’s worksites.

We would also add that it makes a very good impression on an OSHA judge if some company policies are even more stringent than OSHA regulations, since it is common knowledge that many OSHA regulations are hopelessly out of date and obsolete.