Knowing Your Legal Defense To OSHA Citations

One of the most common root causes of OSHA violations is a company’s lack of a specific, written, and enforced safety policy that conforms with OSHA standards.

There are two good reasons for having a specific, written, and enforced company safety policy: First, your shops and jobsites will be safer and the number of worker’s compensation claims will be diminished; second, if you are cited by OSHA for a violation, you have a solid and recognized defense in subsequent legal proceedings.

A defense to OSHA violations that most courts in the country recognize is the “Unforeseen Employee Conduct” defense. The defense has two requirements:

1. The alleged violation, committed by an employee, occurred without the employer’s knowledge; and
2. The violation was extremely unusual, in violation of an enforced company safety rule, and wasn’t foreseeable by the employer.

Knowing this defense, companies should focus on their safety efforts by developing a written policy and enforcing it strictly.

The Courts look to see that an employer has taken steps to ensure a safe workplace. The employer will never be relieved of that duty, but it can influence decisions.

OSHA regulations are often mysterious. Identifying what and when regulations apply to you can be a very complicated process. The help of an attorney or other expert in developing company safety policies is recommended. Here are some simple steps that an employer can take to minimize exposure to a dreaded OSHA inspection:

- Employee Handbook - Develop a detailed employee handbook that makes clear the importance and existence of a company safety policy, and the disciplinary actions that will be taken when a employee violates that policy.
- Employee Training Program - Develop a training program that emphasizes the company safety policy, and create a written docu-

By Perry R. Safran

with thanks to
Christopher N. Heiskell,
Campbell University School of Law

About the Author:
Perry R. Safran is a Raleigh, North Carolina construction engineer/attorney who specializes in construction law. Perry combines ten years of construction engineering with ten years of legal practice to offer a unique service. Perry travels frequently and lectures on a variety of construction industry issues.