

THE LEGAL ASPECTS OF SCAFFOLDING

OSHA Has Scaffold Standards that Apply to All the Trades

By
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A though a necessary part of the interior and exterior wall and ceiling contractor's work, the use of scaffolding presents many legal issues and requires vigilant attention to guard against possible liability. The areas of potential legal entanglement involving scaffolding include personal injury suits, regulations set by the Occupational Safety and Health Administration, indemnity agreements and contractual indemnity, workers' compensation, and design and maintenance. This article begins a discussion and review of the legal aspects of scaffolding use with a summary of OSHA requirements.

The federal Occupational Safety and Health Act of 1970 requires each employer covered by the act to furnish to each of his employees a place of employment free from recognized hazards that may cause death or "serious physical harm" (the "General Duty"); and also to comply with other specific occupational safety and health standards issued under OSHA. The specific standards applicable to scaffolding are printed in 29 Code of Federal Regulations § 1926.451, and are summarized later in this article. The General Duty may also apply, since OSHA often takes the position that the General Duty supplements and extends the obligations under specific standards.

Coverage of the Act

OSHA covers (1) any employer, (2) having employees, (3) engaged in a business "affecting commerce" (but does not include federal government, state or local

government employees). The jurisdiction of the act is interpreted very broadly, and any "scintilla of evidence" of contact with interstate commerce is sufficient to bring the employer within coverage.

Any employer with one or more employees at the time of a violation who is engaged in a business affecting commerce is covered. 29 C.F.R. § 19754(a)

General Duty Clause

All contractors are subject to OSHA's "general duty" to furnish a work place free of recognized hazards that are causing or are likely to cause death or serious physical harm to its employees. Under the general duty clause, an employer is liable for an OSHA citation if any of the following occur

- A hazard is present at times and places when employees are exposed to it by their work activities.

- The hazard is recognized as one that may cause harm.

- The hazard is likely to cause death or serious physical harm.

A hazard is a "recognized" hazard even if the particular employer is ignorant of its potential for harm, if industry experts would generally recognize the existence of the hazard.

The general duty clause does not encompass unpreventable hazards, however. A hazard is generally recognized as preventable if there is a feasible method of protecting employees, and unpreventable if its occurrence would be considered unlikely by industry experts. The record must also indicate that the feasible protective measures would "materially reduce" the likelihood of injury to employees.

Specific Scaffolding Standards

Wall and ceiling contractors are subject to all the detailed construction industry safety standards adopted by the Department of Labor under OSHA and published in the Code of Federal Regulations.

Safety standards of particular importance to scaffolding operations include both general requirements applicable regardless of construction and design and differing standards for fabrication of wood, steel and other types of scaffolds.

The general requirements include these:

- The footing or anchorage for scaf-

olds must be sound, rigid and capable of carrying the maximum intended load without settling or displacement. Unstable objects such as barrels, boxes, loose bricks or concrete blocks cannot be used to support scaffolds or planks.

- No scaffold shall be erected, moved, dismantled or altered except under the supervision of competent persons.

- Guardrails and toeboards shall be installed on all open sides and ends of platforms more than 10 feet above the ground or floor, except needle beam scaffolds and floats. Scaffolds 4 feet to 10 feet in height, having a minimum horizontal dimension in either direction of less than 45 inches, must have standard guardrails installed on all open sides and ends of the platform.

- Guardrails must be 2 inches by 4 inches, or the equivalent, approximately 42 inches high, with a midrail, when required. Supports must be at intervals not to exceed 8 feet. Toeboards have a requirement of a minimum of 4 inches in height.

- Where people are required to work or pass under the scaffold, scaffolds with a screen between the toeboard and the guardrail, extending along the entire opening, consisting of No. 18 gage U.S. Standard wire ½-inch mesh, or the equivalent must be provided.

- Scaffolds and their components have to be capable of supporting--without failure--at least four times the maximum intended load.

- Any scaffold, including accessories such as braces, brackets, trusses, screw legs, ladders, etc., that becomes damaged or weakened from any cause must be immediately repaired or replaced.

- All load-carrying timber members of scaffold framing must be Stress Grade construction grade lumber.

- All planking must be Scaffold Grades, or equivalent.

- The maximum permissible span for 1¼ x 9-inch or wider plank of full thickness shall be 4 feet with medium duty loading of 50 p.s.f.

- All planking of platforms shall be overlapped (a minimum of 12 inches), or secured from movement.

- An access ladder or equivalent safe access must be provided.

- Scaffold planks shall extend over their end supports not less than 6 inches nor more than 12 inches.

- The poles, legs or uprights of scaffolds must be plumb and securely and rigidly braced to prevent swaying and displacement.

- Overhead protection must be provided for workers on a scaffold exposed to overhead hazards.

- Slippery conditions on scaffolds must be eliminated as soon as possible after they occur.

- No welding, burning, riveting or open flame work can be performed on any staging suspended by means of fiber or synthetic rope.

- Wire, synthetic or fiber rope used for scaffold suspension must be capable of supporting at least six times the rated load.

- The use of shore or lean-to scaffolds is prohibited.

The regulations also include specific requirements for the proper design and fabrication of wood pole scaffolds, steel tube and coupler scaffolds, carpenters bracket scaffolds and plasterers, decorators' and large area scaffolds.

Standard Uses

These OSHA standards do not only govern and affect liability for OSHA citations. They also bear on personal injury lawsuits. Courts have in many instances held that OSHA standards can be admitted into evidence to show the existence of a duty or obligation (of protection from injury) owed to an injured employee. The law distinguishes between two ways in which OSHA standards can be used:

- As evidence of the applicable reasonable "standard of care" that should be observed.

- As conclusive evidence of what the applicable standard of care is ("negligence *per se*").

Courts have also admitted findings in OSHA cases into evidence to establish the defendant's conduct. In the majority of courts, violations of OSHA standards are admissible as evidence of negligence, although in a few cases courts have ruled that OSHA violations were not admissible or were irrelevant. □

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