THE LEGAL ASPECTS OF SCAFFOLDING

OSHA Has Scaffold Standards that Apply to All the Trades

By Peter R. Spanos

Although 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 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 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 scaffolds 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 1½ 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.
- Scaffolding 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.

**About the Author**

Peter R. Spanos is an attorney with the law firm of Hendrick, Spanos & Phillips, Atlanta, and general counsel for the Association of the Wall and Ceiling Industries—International.