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Cal/OSHA Multi-Employer Worksite Citations: Who Is Liable and How to Defend

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First published at mcneilsafetyconsulting.com/blog/multi-employer-worksite-citations-california-who-is-liable/

A framing subcontractor's employee is found working near an unguarded floor opening. The opening was cut by the plumbing sub. The general contractor's superintendent walked past it that morning. When Cal/OSHA arrives, all three companies can be cited for the same hazard, and often are. The multi-employer worksite doctrine is the reason. It allows Cal/OSHA to hold employers responsible for hazards they did not create and that did not expose their own workers, provided they fit one of four categories. General contractors, subcontractors, staffing agencies, property owners who manage their own projects, and the attorneys who represent them all need to understand how it works, because the defense to a multi-employer citation is different from the defense to an ordinary one.

The Four Employer Categories

Title 8, Section 336.10 sets out California's version of the doctrine. It applies to any multi-employer worksite, not just construction, though construction is where it appears most often. Cal/OSHA may cite an employer that falls into any of the following categories:

The creating employer. The employer that caused the hazardous condition. In the example above, the plumbing sub that cut the floor opening and left it unguarded is the creating employer. It can be cited whether or not its own employees were exposed.

The exposing employer. The employer whose employees were exposed to the hazard. The framing sub whose worker was near the opening is the exposing employer. This is the traditional basis for a citation and the one most employers expect.

The controlling employer. The employer that had the authority, by contract or in practice, to correct the hazard or to require others to correct it. The general contractor is nearly always a controlling employer because it controls site access, sequencing, and the subcontracts. A construction manager or an owner with an on-site representative directing the work can be one as well.

The correcting employer. The employer specifically responsible for correcting the hazard, typically through a contract that assigns it safety or maintenance duties for a particular condition. A scaffold company that erects and maintains scaffolds on site is a correcting employer for scaffold hazards.

How Subcontractors Get Cited for Hazards They Did Not Create

Subcontractors are most often cited as exposing employers. Their worker was in the zone of danger, so the sub is responsible, even if the trench was dug, the scaffold built, or the wiring left exposed by



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someone else. Cal/OSHA's position is that every employer must protect its own employees from the hazards it knows or should know about, and that a subcontractor who sends a crew into a condition it could have identified has failed to do so.

This catches subs who assume the general contractor is handling site safety. The general contractor's obligations do not relieve the sub of its own duty under Section 3203 to maintain an Injury and Illness Prevention Program that includes hazard inspection and correction, and under Section 1509 in construction to have a program that addresses the specific hazards of its work. When a sub cannot show that its foreman inspected the work area, identified the hazard, and either had it corrected or removed the crew, the citation as an exposing employer generally holds.

How General Contractors Get Cited as Controlling Employers

General contractors are cited most often as controlling employers, and this is the category that draws the most litigation. The theory is that the general had the ability to have the hazard fixed and did not. Cal/OSHA does not need to prove the general created the hazard or that its own employees were exposed. It needs to show that the general had control, that the hazard was one a reasonably diligent controlling employer would have discovered, and that the general failed to exercise reasonable care to prevent or detect it.

Reasonable care for a controlling employer is not the same as the care owed to one's own employees. The Appeals Board has recognized that a general contractor is not expected to inspect as frequently or as closely as the subcontractor performing the work. What it is expected to do depends on the size of the project, the nature of the hazard, the general's own inspection history, and whether the hazard was obvious or hidden. A fall hazard visible from the superintendent's daily walk is treated differently from a defect inside an electrical panel that only the electrical sub would open.

Defending a Multi-Employer Citation

The defenses depend on the category. Common approaches include:

- **Challenge the category.** If cited as a controlling employer, show that you did not in fact have authority over the condition. Subcontracts, site logs, and the scope of your on-site staff's role are the evidence. A construction manager with an advisory role is not automatically a controlling employer.
- **Prove reasonable care.** For a controlling employer, produce your inspection records, your safety meeting minutes, your written notices to subcontractors, and your enforcement history. A general that documented regular walks, issued written corrective notices, and stopped work when necessary has a strong reasonable-care defense even if a hazard slipped through.
- **Establish lack of exposure.** If cited as an exposing employer, show that your employees were not in the zone of danger and had no access to it. Time cards, daily reports, and witness statements matter here.



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- **Show the hazard was not reasonably discoverable.** Hidden conditions, hazards created minutes before the inspection, and conditions inside another trade's exclusive work area all support this argument.
 - **Attack the classification.** Even where a violation stands, the difference between a general and a serious classification, and between serious and willful, changes the penalty substantially. Penalties can reach well into five figures per serious violation and higher for willful or repeat violations, so classification is often where the real money is.

An appeal must be filed within fifteen working days of receipt of the citation. That deadline is strict. File the appeal, then build the case.

Preventing the Citation in the First Place

The best defense is a record that already exists when the inspector arrives. General contractors should have a site-specific safety plan, a documented daily inspection routine, written subcontractor safety requirements incorporated into every subcontract, a system for issuing and tracking correction notices, and evidence that the system is enforced. Subcontractors should have a foreman-level pre-task inspection that is documented, a procedure for reporting hazards created by other trades to the general in writing, and the authority and willingness to hold the crew back until the condition is fixed.

What to Do Now

- If you have received a citation, calendar the fifteen-working-day appeal deadline today and file the appeal to preserve your rights.
- Identify which employer category Cal/OSHA is relying on for each item. If the citation does not say, request clarification and note the omission.
- Gather subcontracts, daily reports, inspection logs, correction notices, toolbox talk records, and photographs from the days surrounding the inspection.
- Review your IIPP under Section 3203 or Section 1509 and confirm that it describes the inspection and correction practices you actually follow.
- Amend subcontract templates so that safety responsibilities, correction authority, and notice procedures are spelled out for future projects.

McNeil Safety Consulting helps general contractors, subcontractors, and their attorneys across California analyze multi-employer citations, assemble the factual record, and present the technical case at informal conferences and before the Appeals Board. Learn more about our [OSHA violation defense services](#) or call **(626) 546-9384** as soon as a citation arrives.

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