Los Angeles Painting & Finishing Contractors Association

COMPLYING WITH COMPANY-SPECIFIC SAFETY REQUIREMENTS AND CAL/OSHA

Tim Bormann, CIH, FAIHA, The Cohen Group

It is not uncommon for employers to add requirements to their Injury and Illness Prevention Program (IIPP) that may go beyond (or be more protective) than Cal/OSHA requires. But, can an employer be cited by Cal/OSHA for violation of internal safety requirements? Recently there was a Cal/OSHA Appeal where an employer (a contractor) had an internal requirement that employees tie-off with fall protection when working at a height of 6-feet whereas the construction fall protection regulation §1670(a) requires fall protection at heights of 7 1⁄2 feet. An employee fell from a height of 6-feet three-inches while climbing on a shoring tower without fall protection. Cal/OSHA cited the employer for failure to properly implement its own IIPP by not enforcing the requirement that employees use fall protection when working from heights over 6-feet and failure to identify the unsafe condition of employee standing on a 10-inch-wide scaffold plank when working at the elevated height.

The first citation alleged a violation of 8 CCR §1509(a) – IIPP for Construction which states "every employer shall establish, implement and maintain an effective Injury and Illness Prevention Program in accordance with section 3203 of the General Industry Safety Orders." Specifically, Section 3203 (a)(2) requires the IIPP "include a system for ensuring that employees comply with safe and healthy work practices", and (a)(4) "include procedures for identifying and evaluating work place hazards including scheduled periodic inspections to identify unsafe conditions and work practices." On initial appeal the Administrative Law Judge (ALJ) affirmed the citations. The employer argued that the Division lacked jurisdiction to issue a citation based on the employer's own safety rules which were stricter than the Cal/OSHA standard. However, the Division maintained the employer failed to effectively implement its own IIPP with regard to the 6-foot rule.

The employer contended that the ALJ incorrectly focused on the employer's failure to enforce its 6-foot rule without analyzing whether the employer had a system in place for ensuring employee compliance with safe work practices. In order to show a violation, the Division must demonstrate that the employer did not comply with any of the listed methods in Section 3203 (a)(2) and (a)(4). Based on previous Cal/OSHA Appeals Board Decisions, a violation of an employer's internal safety rules alone cannot be the basis for violation of §3203(a)(2).

However, the employer included provisions for recognition of employees with good safety habits and disciplinary protocols for employees who violate safety rules, including zero tolerance for fall protection violations. The Appeals Board concluded that the employer complied with at least two of the methods listed in 3203(a)(2) by implementing regular training and disciplining employees who violate safety rules (e.g., the employee who fell was fired). The Appeals Board concluded that the ALJ did not take these factors into consideration and did not establish a violation of §3203(a)(s). The employer did what was required to establish compliance with the regulation.

With respect to the second cited violation, the Division alleged the employer failed to identity the unsafe condition of an employee standing on a single 10-inch-wide scaffold plank while working at elevated heights in violation of §3203(a)(4). To establish a violation, the Division must show that the employer failed to implement its duty to inspect, identify and evaluate the hazard. The relevant safety orders 8 CCR 1637(a) requires that "scaffolds shall be provided for all work that cannot be done safely by employees standing on permanent or solid construction at least 20 inches wide, except where such work can be safely done from a ladder".

Although the employer conducted an inspection and held two safety meetings on the morning of the accident, the use of a single plank to stand on while constructing the shoring tower was not identified as unsafe. The Appeals Board stated the hazard should have been identified by the employer. The ALJ concluded that the Division established (and the Appeals Board agreed) the employer failed to provide a qualified person to supervise the erection of the shoring tower, and that the supervisor did not adequately supervise the employee who fell.

In summary the employer won the appeal for not using fall protection when working at a level of 6-feet above ground (as required in the employer's IIPP), and for providing a system for ensuring that employees comply with safe and healthy work practices. However, the employer lost the appeal on §3204(a)(4) by not identifying and evaluating the workplace hazard of standing on the single 10-inch plank.

Bottom Line:

Although the employer ultimately won the appeal, it is important to review your safety program and IIPP to ensure that you comply with their requirements. As a general rule, you should not engage in voluntary safety requirements if you are not prepared and willing to implement the required changes. Also, it is important that you conduct thorough safety inspections of your jobsites and document findings. Don't just mark everything as acceptable on the inspection form when you find a hazard; document it and indicate corrective action.