

Why Construction Cos. Should Prioritize Protective Equipment

By **Astrid Guardado**

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The construction industry is booming and is expected to continue to grow as we head into 2019. Given such growth, it should come as no surprise that construction workers are suffering an inordinate amount of serious occupational injuries. What may come as a surprise, however, is that construction accounts for 21 percent of America's work-related fatalities[1] and that far too many of those injuries are related to workers not wearing effective personal protective equipment, or PPE.



Astrid Guardado

With the Occupational Safety and Health Act of 1970, Congress created the Occupational Safety and Health Administration to promote safe and healthful working conditions for working men and women by setting and enforcing standards and by providing training, outreach, education and assistance. The act is the most pervasive safety statute governing the construction industry. It applies to most private sector employers and to a limited amount of public sector employers and their workers.

The act imposes two duties on employers: (1) a general duty to furnish each employee work and a place of employment which are free from recognized hazards that are likely to cause death or serious physical harm; and (2) a specific duty to comply with the safety and health standards promulgated under the act.

The act also includes specific construction-related PPE specifications which are set forth in the Code of Federal Regulations at 29 CFR 1926. Among other things, the act provides that employers are responsible for requiring that workers wear and use appropriate PPE in all operations where there may be exposure to hazardous conditions. PPE must be selected which will protect workers from the specific hazards which they are likely to encounter on their jobs.

Violating the act comes with a heavy price, as OSHA can issue citations and impose civil penalties of up to \$70,000 per violation, as well as fines up to \$500,000 for willful violations that result in the death of an employee. Moreover, an egregious violation of the act can land a company official in prison for up to six months.

Also alarming is that, under the act, even an employer who is unaware of a hazardous issue may be held liable, if the injury could have been prevented through reasonable safety precautions.[2] Since compliance with OSHA's PPE requirements is one of the primary defenses that a construction employer can raise against

such liability, employers who fail to abide by OSHA's PPE regulations are regularly fined heavily by OSHA.

Whether employers are actually aware of and understand OSHA regulations, including its PPE standards, they are charged with that knowledge and are nonetheless responsible for compliance.[3] In fact, courts have routinely ruled against employers who failed to require the use of a wide range of PPE, such as safety shoes and goggles, hard hats and safety nets.[4]

Despite the potential for liability that exists, many construction employers are still falling short when it comes to protecting their employees. Therefore, it is imperative that employers use all feasible means to understand, implement and enforce compliance with OSHA's PPE standards, particularly in light of the fact that an estimated 90 percent of work-related injuries can be prevented or minimized by wearing proper PPE.

With few exceptions, OSHA now mandates that employers provide PPE at no cost to workers. It also requires employers to complete a hazard assessment at every job site to determine what safety hazards are present or likely to be present. This is the first and most crucial step that should be undertaken by an employer.

The hazard assessment should begin with a walk-through survey of the job site to develop a list of potential hazards. The possibility of multiple and simultaneous hazards should be considered during such. Likewise, for specific job duties and tasks. The assessment should then be used to determine the type of PPE that should be available for use on a construction project.

PPE should fit properly and comfortably. Such can make the difference between being well protected and dangerously exposed. When feasible, an employer should select PPE that will provide a level of protection greater than the minimum required to protect employees from hazards.

Hazard assessments must be documented in writing and dated. They must comprehensibly identify all hazards or potential hazards. And, they must state the name of the person certifying the evaluation.

Also, construction work sites should be periodically reassessed for changes in conditions, equipment or operating procedures that could affect occupational hazards, noting that the suitability of existing PPE should be included in each reassessment. These reassessments should also include a review of injury records to spot any trends or areas of concern. If any concerns are identified, immediate and proper corrective action must be taken.

OSHA has also determined that the proper maintenance of PPE should also be of the utmost importance to employers. As such, PPE must be inspected and replaced on a regular basis, as failing to do so can make the PPE less effective, thereby increasing safety risks and the potential for liability.

Further, employers must provide training to all workers who are required to use PPE. The training should cover such things as when and what PPE is required and how to properly wear and care for the PPE. It should also include any limitations which may be associated with the PPE.

Employees who do not understand PPE requirements must be retrained. If there are any changes on the work site, or a new type of PPE is required, all affected workers must be retrained as well. Employers should maintain a detailed record of their PPE trainings.

The bottom line is that construction sites are riddled with disproportionately large amounts of safety hazards and risks. And, while PPE is not generally 100 percent foolproof, it is vital in protecting workers from injuries when accidents occur. As such, it is imperative that employers not only understand what PPE is needed for

each construction project, but ensure that it is readily available to their workers at all times. It also goes without saying that understanding and properly implementing OSHA's PPE regulations can protect lives, save money and contribute to the continued improvement and reputation of the construction industry.

Astrid Guardado is a senior attorney at Becker & Poliakoff PA.

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[1] Industries at a Glance: Construction: NAICS23, Bureau of Labor Statistics, March of 2017.

[2] Brennan v. Butler Lime & Cement Co., 520 F.2d 1011 (7th Cir. 1975).

[3] Ed Taylor Const. Co. v. Occupational Safety and Health Review Comm'n, 938 F. 2d 1265 (11th Cir. 1991).

[4] See I.T.O. Corp. of New England v. OSHRC, 540 F. 2d 543 (1st Cir. 1976); U.S. Steel Corp. v. OSHRC, 537 F. 2d 780 (3d Cir. 1976).