

Commentary

## Accountability a Must to Lower Astounding Number of Construction Site Injuries, Deaths

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By **Michael Hersh**

In January, the Occupational Safety and Health Administration (OSHA) cited Florida Roofing Experts Inc., a Jacksonville roofing contractor, for failing to protect workers from falls. OSHA proposed over \$1 million in penalties. According to OSHA, Florida Roofing Experts Inc. has an extensive history of violations demonstrating disregard for worker safety.



OSHA has promulgated fall protection standards and provides employers with numerous resources to help them comply with those safety standards. Fall protection and related training requirements routinely fall within the top 10 cited OSHA standards, according to the agency. Of the nearly 5,000 private industry worker fatalities each

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year, over 20% are in a construction setting and more than a third of construction-related deaths result from falls. According to OSHA, falls is the leading cause of private sector fatalities in the construction industry and is considered one of the “fatal four.” OSHA proclaims that if the fatal four (which in addition to falls includes strikes with objects, electrocution and caught-in/between) were eliminated, many hundreds of lives would be saved in the United States every year.

OSHA standards exist for this reason—to prevent worker-related injuries and fatalities. Given the prevalence of fall-related incidents, the need and requirements for fall protection are clear and should be generally understood. Unfortunately, though, OSHA’s citation against Florida Roofing Experts Inc. in January is not entirely surprising because far too many companies and contractors either fail to grasp the importance and

meaning of the fall protection standards or otherwise simply ignore them, leading to the unfortunate number of injuries and deaths from falls every year.

## **Failing to Abide by Fall Protection Standards**

January's citation however highlights another crucial issue—when companies and contractors fail to abide by fall protection standards, they not only put their employees in harms' way, they jeopardize the safety of everyone on site. Construction sites have numerous employees from various contractors all working among each other, exposing one another to each other's work. Contractors injure and kill workers employed by others by creating or ignoring dangerous conditions, including unprotected, inadequately protected or unmarked holes.

Regrettably, these wrongdoers are not always held accountable. OSHA investigations following incidents generally focus on the employer and contractors often attempt to protect each other and their respective subcontractors. This leads to contractors whose conduct harms the employees of others often being left unscathed, particularly after lawyers shy away from bringing cases when OSHA didn't cite the prospective defendant and total or partial workers compensation immunity presents enormous obstacles.

Last year, my office resolved a case involving a client who fell nearly twenty feet to the concrete below and suffered substantial orthopedic and head injuries. Given his condition at the time, the OSHA investigator never spoke to him. Instead, OSHA spoke only to the general contractor's project superintendent, who protected the general contractor and who later acknowledged telling a subcontractor who was sued following the incident that he had the subcontractor's back. OSHA cited the victim's employer and no one else. The victim had difficulty finding an attorney to help pursue his claims, given the OSHA report and workers compensation immunity.

Sadly, what the OSHA report missed was this ... a subcontractor cut a hole in a roof nearly twenty feet off the ground and walked away leaving it unprotected and unmarked. The hole was later covered by an unmarked piece of plywood that was not secured. As a result, the subcontractor violated several fall protection standards and safety protocols, including its own internal standards, which in turn exposed the victim to an incredibly dangerous condition of which he was not aware. Through the lawsuit, the

subcontractor was held accountable. However, because OSHA did not consider the subcontractor who cut the hole, and because of the hurdles of workers compensation immunity, the subcontractor nearly got away with its dangerous misconduct, which might have led to similar dangerous conduct in the future.

It remains critical that OSHA do the important work it does every day and cite companies like it did in January when it finds employees left unprotected, in violation of safety standards. OSHA though is inundated with work and budgetary issues (its investigators are even protected from deposition due to these issues), and therefore holding contractors responsible for safety violations also falls on the shoulders of lawyers willing to face the hurdles presented by these lawsuits. And, we must be willing to face and overcome these hurdles. There is otherwise no real hope that the staggering number of construction site injuries and deaths will go down in the years to come.

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