

You Can't Sub Out Safety

by Perry Safran and Brannon Burroughs



The safety of your employees is *your* legal responsibility. Relying on a third party to ensure the safety of your workplace or machinery may not protect you from liability.

Grounds for a Suit

In a recent case, BCF Piping was hired by Stowe-Pharr to renovate Stowe-Pharr's plant. One piece of equipment BCF needed for the job was a welding machine. BCF first verified that its welding machine was properly wired internally. BCF then delivered the machine without an electrical plug, a common practice in the industry. A Stowe-Pharr employee installed a plug, but failed to properly ground the machine. When another Stowe-Pharr employee used the welder on non-BCF work, he was electrocuted.

BCF was cited with a variety of OSHA violations, including a failure to recognize and avoid workplace hazards. When legal action was taken against BCF, the company sued Stowe-Pharr for contribution in the suit. The court acknowledged the legal requirement of an employer to "furnish to each of his employees conditions of employment ... free from recognized hazards ... likely to cause death or serious injury ... to his employees." The court also held that generally accepted trade practices do not excuse employers from their duty to provide a safe workplace. BCF had followed standard industry practice, the court noted, in delivering the welding machine without a plug. But the court found that an employer who entrusts safety assurance to an agent becomes responsible for that agent's failure to comply with OSHA regulations. The court held that BCF was not entitled to rely on Stowe-Pharr to make sure the plug was properly grounded, even though this was a "reasonable" practice for the industry.

The Court dismissed BCF's argument that the welding equipment was not under BCF's control. It found that BCF

still controlled the machine, and that BCF employees were equally susceptible to the same accident. The lesson of this case is that you cannot avoid your duty to provide a safe workplace by contracting the duty out. If you send equipment and personnel to another location, your obligation to prevent accidents goes with them.

Exception to the Rule

The Court found one exception to the rule. The exception applies to accidents on multi-employer work sites, where the employer didn't create or control the hazard, and where no specific duty exists to inspect for danger. For example, a general contractor in another case was not fined when an oil kettle operated by a subcontractor exploded. In that case, the hose blockage that caused the explosion was not open and obvious, and the contractor was unaware of it. The court ruled that the employer was not liable for an unknown hazard that was not reasonably discoverable.

But this exception falls under the general rule, established in prior cases, that an employer must "make reasonable efforts to detect and abate any violation of safety standards of which it is aware and to which its employers are exposed *despite* the fact that the employer did not commit the violations." A good rule of thumb is that if the contractor could have discovered the hazard through reasonable diligence, the contractor will be held liable for the effects of the hazard.

By remaining alert to workplace dangers and by instructing employees to routinely take precautions against hazards, you can protect your employees and yourself from the effects of workplace accidents, no matter whose site they're on. ■

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