



Fall Hazards: One of OSHA's "Big Three"

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I. INTRODUCTION

In 2010, the Bureau of Labor Statistics (BLS) reported that fatal work injuries involving falls decreased 2 percent in 2010 (from 645 in 2009 to 635 in 2010), although each one of these incidents is a human tragedy. Fortunately, since 2007, fatal falls in the private construction industry have decreased by 42 percent. Despite this decrease in injuries, OSHA's fall protection standards continue to be among the leading bases for citations against employers. In 2011, in fact, OSHA's construction fall protection and related scaffolding standards were the top two most frequently cited standards.

Fall protection requirements are located in multiple places throughout OSHA's standards, particularly for general industry (Part 1910). The application or potential application of several different standards can make it difficult for employers to determine their fall protection obligations. This article outlines the various OSHA standards that contain fall protection requirements and recommends proactive measures for employers to identify and prevent fall hazards.

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II. **LEGAL FRAMEWORK**

Fall protection requirements apply in a large variety of situations, including working on top of large tanks or other equipment, working on top of tractor trailers, using fixed or portable stairways, and working on rooftops (with or without a pitch). The general term “fall protection” involves more than just preventing personnel from falling, but also includes preventing tools and other equipment from falling from elevated surfaces onto employees walking or working below.

Under OSHA’s General Industry standards (Part 1910), the following specific code sections contain fall protection requirements:

- 1910.23, Guarding floor and wall openings and holes
- 1910.66, Powered platforms for building maintenance
 - Appendix A, Guidelines (Advisory)
 - Appendix C, Personal fall arrest system (Section I - Mandatory; sections II and III - Non-mandatory)
- 1910.67, Vehicle-mounted elevating and rotating work platforms (Aerial lifts)
- 1910.132, General requirements related to personal protective equipment
- 1910.268, Telecommunications
- 1910.269, Electric power generation, transmission, and distribution

In general, OSHA requires some form of fall protection equipment for any walking or working surface that is elevated four feet or more. Such fall protection equipment generally refers to guardrails (including mid-rails and toe boards) or other fixed barriers that physically prevent an employee from falling. Fall protection can also

refer to personal fall arrest systems, such as harnesses and lanyards, which will stop an employee from falling more than a specified distance.

Section 1910.132 places a general obligation on employers to identify hazards in the workplace that may require personal protective equipment. Personal fall arrest systems are considered personal protective equipment; therefore, employers are required to evaluate the workplace to identify potential fall hazards and to provide and require the use of appropriate protective equipment to protect employees from those hazards. This regulation also requires employers to certify that this assessment has been done and that the fall protection equipment has been provided.

OSHA's Construction standards (Part 1926) contain more consolidated fall protection requirements. For example, Section 1926.501 requires employers to provide fall protection equipment for any employee walking or working more than six (6) feet above the lower level.

Whether OSHA's General Industry or Construction standards apply depends on the type of activities employees are engaged in. The lines between General Industry and Construction activities often blur in industries where employees perform some activities that fall within the "construction" category and some activities that fall within "general industry" categories, such as the outdoor advertising (billboard) industry, and building inspectors who enter construction areas to conduct inspections. Thus, careful scrutiny of which category of standards applies is necessary for any employer to determine its obligations with respect to fall protection.

III. RECENT DEVELOPMENTS

OSHA continues to aggressively enforce fall protection requirements through issuing citations to employers who violate any one or a combination of the standards listed above. For example, OSHA recently issued a roofing company in Massachusetts ten Serious citations related to employees working on a ladder jack scaffold atop the roof of a building in Boston. The citations amounted to \$42,000 in civil penalties.

Similarly, OSHA has recently cited multiple employers around the country in connection with tragic falls through building skylights. Employees who are not in the roofing industry, but who venture onto a roof to check HVAC systems or make other repairs to the roofing system may not be as aware of fall hazards, particularly where there are openings in the roof surface like skylights or vents. In February 2011, OSHA cited Ryder Transportation Services and its outside electrical contractor for violating the general industry standard, 29 CFR §1910.23(a)(4), after an electrician died on Ryder's premises. In 2006, Ryder designated the rooftop of their Doraville, GA facility as a "Restricted Area," forbidding access to Ryder employees. This demarcation served as an alternative measure ensuring compliance with standing OSHA skylight regulations, as the rooftop skylights had neither a protective screen nor a fixed standard railing on all exposed sides. Furthermore, the skylights' design blended in with the surround tin roof camouflaging a perilous 25.8 foot drop to the ground. In order to repair ventilation fans, however, an outside electrician was granted access to the rooftop without being made aware of the skylight hazards. Sadly, the electrician fell to his death after a skylight collapsed under his weight.

In addition to aggressive enforcement, OSHA has also proposed extensive revisions to the General Industry walking and working surfaces regulations. Although OSHA first proposed these revisions in the 1990s, OSHA reopened the rulemaking docket in 2010 and held multiple public hearings in 2011 in an effort to move forward with the revisions. OSHA has slated October 2012 as a goal for publishing a final rule revising the walking and working surfaces standard.

IV. CONCLUSION AND RECOMMENDATIONS

There is no question that OSHA under Dr. David Michaels continues to crack down on employers who violate fall protection requirements. Employers should be aware of the potential liability associated with allowing employees to work at elevated heights and should take all reasonable measures to ensure that employees are protected while working on elevated surfaces. Along these lines, employers should develop a strategy, including:

- Employers should evaluate the workplace to identify elevated areas that may require guardrails or other protective equipment.
- Employers should develop written fall protection work rules that cover any situation that involves employees walking or working at heights, including using mobile equipment like manlifts and mobile platforms.
- Employers should ensure that employees are trained to recognize potential fall hazards in the workplace and to notify management of any unprotected walking/working surfaces that are elevated greater than four (4) feet.
- Employers should ensure that whenever a personal fall arrest system is required, employees are trained to inspect the equipment for defects before each use, and to store and maintain the equipment properly to prevent damage.

- Employers should train supervisors to administer disciplinary action against employees who are working at heights without required fall protection equipment.
- Whenever an outside contractor is brought on site, the host employer should seek the contractor's assurance that employees are provided with the required fall protection equipment. Otherwise, the host employer may face OSHA liability under the multi-employer worksite doctrine.