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EMPLOYMENT LAW LETTER

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January 2014

WORKPLACE SAFETY

ADOSH levies huge fine for deaths of Yarnell Hotshots

by Dinita L. James

The world mourned with Arizona when 19 firefighters lost their lives battling the Yarnell Hill wildfire on June 30, 2013. The death toll was the highest from a U.S. wildfire in at least half a century. The wildfire was not only a human and natural tragedy but also a dramatic workplace safety failure. The firefighters worked for the Arizona Division of Forestry (ADOF), and one of the agencies responsible for investigating the accident was the Arizona Division of Occupational Safety and Health (ADOSH).

After months of investigating, the ADOSH recommended issuing three major workplace safety citations. On December 4, 2013, the Arizona Industrial Commission unanimously approved the citations and penalties totaling \$559,000 against the ADOF. Of that, \$84,000 will be passed among state accounts, and \$25,000 will go directly to each of the families or estates of the 19 "hotshots" who died fighting the Yarnell Hill blaze.

Violations put lives in jeopardy

The ADOSH categorized one citation as "willful serious." The ADOSH concluded that the ADOF knowingly put the 19 hotshots and more than 60 other firefighters at risk of smoke inhalation, burns, and death in a futile mission to protect buildings and pasture land.

The two other citations fell in the "serious" category and were based on the ADOF's failure to have a detailed plan in place during a "life[-]threatening transition between initial attack and extended attack operations" and for allowing "critical incident management personnel" to be absent or late at crucial times during the transition.

Tragedy highlights ADOSH's duties

The ADOSH operates under an approved plan with the U.S. Department of Labor (DOL) and has initial

jurisdiction over all occupational health and safety issues and violations in Arizona (except those involving mines, Indian reservations, and federal employees). The ADOSH has extensive consultation and training programs and welcomes opportunities to help businesses improve workplace safety.

The magnitude of the penalty for the Yarnell Hill fire can be seen by comparing it to the total penalties assessed by the ADOSH during fiscal year 2013, which ran from October 1, 2012, through September 30, 2013. During the fiscal year, the penalties assessed by the ADOSH totaled \$875,732.

The maximum fine the ADOSH can assess for a willful violation is \$70,000. For serious violations, the max is \$7,000. Thus, the ADOSH hit the ADOF with all the penalties it had available (\$84,000 for one willful violation and two serious violations). The five-member Industrial Commission has to approve ADOSH citations that assess penalties of more than \$2,500. The ADOF can appeal the citations to an administrative law judge. The ADOF has announced its intention to appeal.

The state faces litigation from the families and estates of the 19 hotshots. One claim seeking \$12 million from the state and \$12 million from both the city of Prescott and Yavapai County already has been filed.

Bottom line

The good news is, most Arizona employers don't send their workers into such hazardous conditions. Nevertheless, the Yarnell Hill tragedy is a good reminder that all employers have a duty to provide safe working conditions.

Our taxes support not only the ADOSH's investigative and enforcement arms but also units that provide



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training, assessment, and assistance to employers that want to improve workplace safety. It makes sense to invite the ADOSH in for a consultation before investigators with citing and fining authority show up to probe an injury or death at your workplace.

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