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WORKPLACE SAFETY

Feds say Arizona rules for home builders too lax

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Arizona currently is one of 26 states and territories authorized to operate its own occupational safety and health program because it has been certified as being at least as effective as federal standards. However, Arizona's authority is in jeopardy because of 2012 legislation backed by the home-building industry.

Fall protection

Falls are the leading cause of death in the construction industry. According to data from the U.S. Department of Labor (DOL), 88 workers in the residential construction sector fell to their deaths in 2012, and 25 percent of those fatal falls occurred while the worker was working between six and 15 feet off the ground.

Arizona has had fall protection standards for residential construction workers in place since 1995. The federal Occupational Safety and Health Administration (OSHA) did not implement federal fall protection standards until 2010. The 2010 federal standards were more stringent than the existing Arizona rules, however.

In 2012, the Arizona Legislature changed the Arizona rules, significantly reducing the fall protection required for employees working between six and 15 feet above the ground. The more lenient Arizona standards went into effect on May 25, 2012. Following an extensive review, OSHA advised the state in December 2012 that it had determined the Arizona fall protection standards were not at least as effective as the federal standards in protecting residential construction workers. For more than a year, OSHA has been meeting and speaking with Arizona stakeholders to resolve the issue, without success.

Revocation warning

The issue came to a head on March 19, 2014, when Dr. David Michaels, assistant U.S. secretary of labor for occupational safety and health, sent a letter to the Industrial Commission of Arizona warning that OSHA soon would act to revoke Arizona's authority to administer the state's occupational safety and health plan in the residential construction industry. OSHA set an April 18 deadline for Arizona to adopt standards at least as protective as the federal ones.

Michaels' letter cited two specific Arizona incidents during the summer of 2013 in which construction workers suffered severe injuries after falls from between six and 15 feet. One of the incidents involved a construction worker near Buckeye who was walking on a loose roof truss without a personal fall arrest system, net, or guardrail, which is what the federal standards require. The construction worker lost his balance and fell approximately 9½ feet to a concrete surface below. He suffered bleeding on the brain, broken ribs, a dislocated shoulder, and a broken finger. In the second incident, a Maricopa worker roofing a multilevel single-family home in August fell approximately nine feet and had to be airlifted to the hospital.

High stakes

If OSHA revokes Arizona's authority, the state would lose a \$2.4 million federal grant that funds much of the work of the Arizona Division of Occupational Safety and Health (ADOSH). Home builders would be forced to abide by the federal standards, deal with federal inspectors, and be subject to federal fines, which are larger than what Arizona imposes.

The Arizona Legislature worked on a fix to resolve the federal-state conflict. In the March letter, however,



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the OSHA secretary made it clear that the legislation then pending wouldn't make Arizona's standards at least as effective as the OSHA standards. "That bill would still allow Arizona workers to be exposed to falls up to 15 feet," the letter states.

A legislative failsafe

The legislation, Senate Bill (SB) 1307, was amended in the Arizona House of Representatives after OSHA sent the March letter. The amendment was a conditional repeal of the 2012 legislation that would occur upon publication in the *Federal Register* of notice that OSHA is initiating proceedings to reject the Arizona standards and take back the state's authority to administer a worker safety plan for the residential construction industry. SB 1307 passed both houses of the legislature, and Governor Jan Brewer signed it into law on April 22, 2014.

Arizona's U.S. senators, John McCain and Jeff Flake, have made a formal request to OSHA to take another look at the Arizona fall protection standards as modified by SB 1307. "We are concerned that OSHA does not appear to consider the long-standing safety record and enforcement efforts of Arizona as it considers the state's fall protection plan," McCain and Flake's letter states.

OSHA appears unlikely to back down. In 2012, the agency joined with the National Institute for Occupational Safety and Health (NIOSH) in launching a national fall prevention campaign targeting the construction industry. On the same day OSHA sent the letter to Arizona, it announced a "National Stand Down" for fall prevention in construction during the week of June 2. OSHA is asking employers and workers to pause during the stand-down to talk about fall prevention, including how to recognize hazards. More information on the National Stand Down is available at www.osha.gov/StopFallsStandDown/index.html.

Bottom line

Employers in the residential construction industry should monitor future developments in this state-federal conflict to keep abreast of which standards are applicable. More important, the National Stand Down in June is a good opportunity to reinforce with workers and supervisors the steps they must take to protect against the devastating injuries that can result from a fall from any height.

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