



FALL PROTECTION - - CONTRACTOR LIABILITY

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In the late 1990s, OSHA convened a Negotiated Rulemaking Committee and tasked the committee with establishing standards for steel erection. The members of the committee included representatives of labor, management, safety experts, government agencies, and the public. The committee debated long and hard over many safety issues involving steel erection. Finally, consensus was reached and a standard was published by OSHA. One of the key issues in the negotiated rulemaking involved fall protection. The question was whether or not contractors should be required to have fully planked or decked floors or nets within every two floors or 30 feet under areas where steel erection is being performed. Those in favor of the floor and decking requirement argued that floors and decking would protect workers on the job below the deck area from the danger of being hit by falling objects and would also protect workers from falling great distances. The Negotiated Rulemaking Committee included a recommendation for what became known as the "30 Foot Rule." That recommendation was incorporated in OSHA standards at 29 C.F.R. §1926754(b)(3).

The Negotiated Rulemaking Committee also considered the question of tripping hazards. The committee recommended that tripping hazards such as shear connectors, reinforcing bars or threaded studs not be installed at the fabricator's shop, but be installed on the job

after decking or other walking/working surfaces were installed. Again, this recommendation was specifically included in OSHA's regulations at 29 C.F.R. §126.54(c)(1).

Soon after the regulations were published and became effective, OSHA decided that it would again review the question of the 30 Foot Rule and issues relating to tripping hazards. OSHA is not authorized to change these regulations without a formal notice and comment rulemaking proceeding. However, OSHA did issue a Compliance Directive, CPL 02-01-034, which set forth the enforcement policy that OSHA will follow in implementing the 30 Foot Rule and the rule governing tripping hazards. In its Compliance Directive, OSHA has taken the position that if a contractor requires that all employees use fall arrest equipment at all times above 15 feet, OSHA will not enforce the requirement for a planked or decked floor or net above 30 feet or enforce the requirement that shear connectors, reinforcing bars or threaded studs be installed on the job after decking or other walking / working surfaces have been installed. OSHA was very careful in its directive not to overturn the rule which it would not have been authorized to do. In the Compliance Directive, OSHA states that a violation of the planking / decking / netting requirement will not be enforced if the employer requires use of fall arrest

equipment at all times above 15 feet and the tripping hazards regulation will not be enforced if the employer requires the use of fall arrest equipment at all times above 15 feet. The Compliance Directive states that failure to comply with the two regulations at issue is a "*de minimus*" violation and informs OSHA inspectors that no citations will be necessary for such circumstances.

Although many of those involved in the original Negotiated Rulemaking Committee including the Iron Workers International Union and IMPACT strongly objected to OSHA's Compliance Directive, OSHA refused to withdraw the Compliance Directive. As a result, some contractors decided to require that employees tie off when they are above 15 feet and at the same time stopped implementing the 30 Foot Rule and permitted shear connectors, reinforcing bars or threaded studs to be installed in the fabricating shop rather than on the job site.

In the spring of 2008, on a major project in Las Vegas, Nevada, an ironworker was killed when he fell while working on a hotel project. The contractor had decided not to follow the 30 Foot Rule and install decking or netting. The contractor did require that the employee tie off but for some reason the fall arrest system did not work. As a result of this tragic death there was a series of newspaper articles followed

by public hearings questioning why OSHA had decided not to enforce the 30 Foot Rule and why the contractor had not installed decking as required under the rule.

In recent weeks, there have been a series of Congressional Hearings questioning why OSHA has not been enforcing existing safety standards. Under the current administration, OSHA has emphasized voluntary compliance initiatives rather than litigation. Critics of OSHA have claimed that OSHA's failure to actively enforce safety regulations has resulted in the significant increase in workplace injuries.

As contractors, TAUC members should recognize that although the steel erection Compliance Directive states that requiring employees to tie off may be an adequate substitute for installing decking under the 30 Foot Rule, failure to follow the regulations may result in significant liability. We recommend that every contractor carefully consider this issue and consult with legal counsel when considering whether to follow the 30 Foot Rule as required by regulation or take the risk of following the tie off requirements in the Directive. Following the Directive may cause unnecessary workplace injuries and result in increased liability that will offset any savings.