



March 19, 2014

Ms. Laura McGrory
State Designee
The Industrial Commission of Arizona
Division of Occupational Safety and Health
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Ms. McGrory:

The Occupational Safety and Health Administration (OSHA) has determined that Arizona Revised Statute, Title 23, Chapter 2, Article 13 is not at least as effective as federal OSHA's standard for protecting residential construction workers from serious fall hazards. There are a number of areas where Arizona's residential fall protection standards are less effective than federal OSHA's, most important the fact that it requires very limited, if any, fall protection for employees working between 6 and 15 feet, whereas OSHA's standard for construction fall protection requires use of conventional fall protection (fall arrest systems, nets, or guardrails) at a height of 6 feet. Although we know that a bill currently before the Arizona legislature would revise that statute, that bill would still allow Arizona workers to be exposed to falls up to 15 feet, and therefore the bill in its current form would not make Arizona's standard at least as effective as federal OSHA's standard.

This letter is to inform you that OSHA will initiate proceedings to reject your proposed State Initiated Plan Change, and reconsider the Arizona State Plan's affirmative Section 18(e) determination unless Arizona submits a revised supplement that corrects the deficiencies or is able to show cause why a proceeding should not be commenced. Unless satisfactorily resolved, these proceedings may involve OSHA's resumption of federal coverage of construction work.

As you are aware, falls are the leading cause of death in the construction industry. In its preliminary data for 2012, the Bureau of Labor Statistics (BLS) reported a total of 775 construction fatalities in the United States and the most common cause was falls, accounting for 269 deaths. Eighty-eight of these fatal falls were in the residential construction sector with 25% of fatal falls occurring between 6 and 15 feet. Nationwide, nearly 9,000 construction workers experienced a fall during 2012 that resulted in one or more days away from work.

Based on the most recently available BLS data, Arizona had 28 residential construction fatalities since 2003, and 11 of these occurred due to falls. While OSHA does not receive

notification of most workplace injuries, during the summer of 2013, federal OSHA received notification of two non-fatal, but severe incidents that occurred in Arizona involving situations where workers fell without proper conventional fall protection being provided:

- A construction worker near Buckeye was walking on a loose truss and was not tied off. He lost his balance and fell approximately nine and a half feet to the concrete driveway/sidewalk below. The worker underwent surgery for swelling from bleeding on the brain, broken ribs, a dislocated shoulder and a broken finger.
- Last August, a worker in Maricopa was roofing a multi-level, single family home and was not protected by conventional fall protection when working approximately nine feet from the ground. The worker fell and his injuries required him to be airlifted to the hospital.

OSHA is also aware of Arizona cases where workers fell and were saved from severe injury by following federal OSHA residential fall protection requirements. The companies who employ these workers choose to protect employees to the federal standard and as a result their lives were not shattered like those above. Examples include:

- A worker in Phoenix was performing residential construction at an elevation of 10 feet when the wind picked up strand board striking the worker and causing him to lose his balance; he was uninjured due to the personal fall restraint system his employer had required and provided.
- Most recently on January 17, 2014, also in Phoenix, a worker sheathing an eave lost his balance and was saved when his personal fall arrest system activated and arrested a nine foot fall through a roof, which would have caused serious injury or worse.

In an effort to address the high incidence of falls in the construction industry nationwide, on December 16, 2010, OSHA announced that it was resuming enforcement of conventional fall protection requirements for residential roofing which had been temporarily suspended in 1995. OSHA's standard for construction fall protection requires use of conventional fall protection (fall arrest systems, nets, or guardrails) at a height of six feet; it also contains exceptions for residential construction where an employer can prove that conventional fall protection is infeasible in the circumstances or creates a greater hazard.

In May 2012, following the passage of SB 1441, the Arizona statute that contains fall protection requirements for residential construction work (Arizona Revised Statute, Title 23, Ch. 2, Art. 13) went into effect, which OSHA believes, as detailed below, does not provide workers protection equivalent to that afforded workers under federal OSHA standards.

By law, states that operate their own OSHA state plans, like Arizona, must enforce standards that are at least as effective as federal OSHA's standards. Following an extensive review of the Arizona Division of Occupational Safety and Health's (ADOSH's) State Initiated Plan Change Number 133, on December 7, 2012 OSHA sent a letter to ADOSH stating that

federal OSHA has determined that the referenced change, entitled “Residential Fall Protection in Construction,” is not at least as effective as the Federal equivalent in ensuring protection of residential construction workers.

Since that time, OSHA has held numerous meetings and phone calls with Arizona stakeholders, ADOSH and the Industrial Commission of Arizona (ICA), which oversees ADOSH. The OSHA National Office in Washington, D.C. also spoken with staff from the Governor’s Chief of Staff at the end of 2013 to express OSHA concerns about the legislation.

Based on this determination that the Arizona residential construction fall protection standard is not at least as effective as the federal standard, and receiving commitments from neither the legislature nor the Governor’s office to adequately change residential fall protection requirements, OSHA will initiate proceedings to reject the supplement and reconsider the Arizona State Plan’s affirmative determination under Section 18(e) of the Occupational Safety and Health Act that it meets the criteria for approval of its state plan, unless Arizona is able to show cause why a proceeding should not be commenced. Reconsideration would involve OSHA’s resumption of federal coverage of construction work in Arizona.

Federal OSHA’s standard for fall protection in residential construction (29 C.F.R. § 1926.501(b)(13)) generally requires conventional fall protection – fall arrest systems, safety nets, or guardrails – any time employees are working at heights of six feet or greater. Alternative fall protection measures may be used only if “the employer can demonstrate that it is infeasible or creates a greater hazard to use” the specified methods of conventional fall protection. 29 C.F.R. § 1926.501(b)(13); *see also* STD 03-11-002, *Compliance Guidance for Residential Construction* (Dec. 16, 2010). Federal OSHA presumes “that it is feasible and will not create a greater hazard” to use conventional fall protection (29 C.F.R. § 1926.501(b)(13), Note), and believes that the exceptions to the general requirement will apply in only “isolated” situations. *See* STD 03-11-002. In the limited circumstances in which conventional fall protection is infeasible or creates a greater hazard, federal OSHA requires the employer to implement a written, site-specific fall protection plan that specifies the alternative measures that will be taken to eliminate or reduce the possibility of a fall. 29 C.F.R. § 1926.501(b)(13); STD 03-11-002.

In contrast, Arizona’s fall protection standard under the revised Statute requires very limited, if any, fall protection for employees working between 6 and 15 feet. At those heights, the Statute requires only a fall protection plan that “reduces or eliminates fall hazards.” Sec. 23-492.07(A). Additionally, unlike the federal OSHA standard, which requires fall protection plans to be site-specific, the Statute allows employers to “develop a single fall protection plan covering all construction operations” for work performed at heights below fifteen feet. Sec. 23-492.07(A)(1).

With respect to work performed at heights of 15 feet or greater, Arizona’s Statute has a provision – similar to federal OSHA’s standard – requiring the use of conventional fall protection unless the employer demonstrates that the use of such measures is infeasible or creates a greater hazard. Sec. 23-492.02(A). However, Arizona’s Statute contains additional

broad exceptions to the general requirement for conventional fall protection that will result in many circumstances in which conventional fall protection is not required.

The Statute suspends all fall protection requirements any time the work being done “is of short duration and nonrepetitive and is of limited exposure and the hazards involved in rigging and installing” conventional fall protection “equal or exceed the hazards involved in the actual construction” work. Sec. 23-492.02(B). In such cases, it requires only that the employer provide for “adequate risk control [that] is recognized and maintained under immediate, competent supervision.” The Statute does not define the terms “short duration,” “nonrepetitive” or “limited exposure.” A broad interpretation of these terms has the potential to render ineffective the general requirement for conventional fall protection at heights at or above 15 feet.

Additionally, the Statute suspends its requirements for conventional fall protection for several framing activities:

- It does not require fall protection to protect employees from falls between joists, rafters, or roof trusses if the “employees are walking or working on securely braced joists, rafters or roof trusses on center spacing not exceeding twenty-four inches and more than six feet from an unprotected side or edge.” Sec. 23-492.04(D)(1).
- It does not require fall protection for employees installing floor joists at heights of up to 15 feet “when [they are] standing on or working from joists laid on their side on the top plate on center spacing not exceeding twenty-four inches” and they are “walking or working within twenty-four inches of the top plate or other structural support.” Sec. 23-492.04(D)(2).
- For some work installing starter board, roof sheathing and fascia board, the Statute suspends fall protection requirements or permits the use of alternative (rather than conventional) fall protection:
 - It allows employers to use slide guards instead of conventional fall protection to protect employees from falls of up to fifteen feet on roofs sloped between 7:12 and 12:12. Sec. 23-492.04(G)(1)(b).
 - It does not require fall protection for employees “install[ing] fascia or starter board . . . from within the gable end truss or rafter” if “the gable end truss has been installed and braced to withstand a lateral force of two hundred pounds.” Sec. 23-492.04(G)(2).
 - It suspends fall protection requirements for work performed by a “qualified person” outside the gable end truss or rafter that “is of short duration and limited exposure” when “the hazards involved in rigging and installing” the fall protection “equal or exceed the hazards involved in the actual construction.” Sec. 23-492.04(G)(3).

The Statute also exempts roofing operations from the general requirement for conventional fall protection above 15 feet. It permits employers to use alternative fall protection measures – such as roof jack systems – in lieu of conventional fall protection when the slope of the roof does not exceed 7:12. Sec. 23-492.05(B). When the roof slope does not exceed 4:12, it permits the use of a safety monitoring system alone. Sec. 23-492.05(A).

OSHA has determined that Arizona Revised Statute, Title 23, Chapter 2, Article 13 is not at least as effective as federal OSHA's standard for protecting residential construction workers from serious fall hazards. Therefore, OSHA will initiate proceedings to reject the supplement and reconsider the Arizona State Plan's affirmative Section 18(e) determination unless Arizona submits a revised supplement that corrects the deficiencies or is able to show cause why a proceeding should not be commenced. Your response is due no later than April 18, 2014.

We are available to offer assistance to you if you choose to correct these deficiencies. Please contact us if you can identify any way that we can assist your efforts to make such corrections. Thank you for your attention and prompt response to this serious matter.

Sincerely,

David Michaels, PhD, MPH
Assistant Secretary
Occupational Safety and Health Administration (OSHA)
United States Department of Labor

cc
Kathy Peckardt
Deputy Chief of Staff
Office of Arizona Governor Janice K. Brewer