U.S. Department of Labor

Occupational Safety and Health Administration
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Marley Hart, Executive Officer
Occupational Safety and Health Standards Board
State of California, Department of Industrial Relations
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Ms. Hart:

Thank you for your August 16, 2013 correspondence to Mr. David Shiraishi, Area Director, Region IX, Occupational Safety and Health Administration (OSHA), regarding the effectiveness of the California Occupational Safety and Health Administration's (Cal/OSHA) standards governing fall protection in residential construction as compared to 29 CFR 1926.501(b)(13). Falls are the leading cause of death among construction workers. Based on 2012 Bureau of Labor Statistics data, 25% of fatal falls nationwide occurred at heights between 6 and 15 feet.

You assert that the effectiveness of Cal/OSHA's standards on residential construction fall protection should be measured by the number of inspections and incident rate and not on an actual comparison to OSHA standards. OSHA regulations establish that effectiveness is evaluated by comparing state standards to OSHA's standards on a provision-by-provision basis. The regulations require that State Plans provide standards with respect to specific issues which will be at least as effective as the standards promulgated by OSHA relating to the same issues. (29 CFR 1902.4(b)(2)). Further, OSHA's indices of effectiveness, set forth in the regulations, require that State Plan standards are "at least as effective" in containing "specific provision[s] for the protection of employees from exposure to hazards, by such means as containing appropriate provision for use of suitable protective equipment and for control or technological procedures with respect to such hazards, including monitoring or measuring such exposure." (29 CFR 1902(b)(2)(vii)).

While we applaud California for achieving an overall construction fatality rate lower than the national rate, these injury and illness rates alone are not conclusive evidence of an "at least as effective" program. As required by the regulations, we need to consider the several areas discussed below where Cal/OSHA standards and enforcement policies for fall protection in residential construction differ significantly from OSHA's standards and policies and are less effective in protecting workers.

Trigger Height

California's system of trigger heights for requiring conventional fall protection in construction is not at least as effective as OSHA's general six foot trigger height in residential construction. OSHA acknowledges that some of California's trigger heights may be more protective than OSHA's six foot rule, such as its requirement for fall

protection regardless of height for residential roofing on roofs with slopes steeper than 7:12; however, there are many situations in which OSHA imposes a six foot trigger height while the California standard implements a trigger height greater than six feet. Examples of these situations include residential framing, which has a trigger height of 15 feet under Cal/OSHA standards, and residential construction roofing activities with slopes less than 7:12, which has a trigger height of either 15 or 20 feet under Cal/OSHA standards, depending on the roof slope. In addition, California's general trigger height of seven and one-half feet may be applicable to residential work such as basement walls and siding, gutter and lighting installation. While seven and one-half feet is close to OSHA's six foot trigger height, it may not be as effective at preventing injury and fatality

Exceptions to General Requirement for Conventional Fall Protection

The California standard includes many exceptions to the general requirements for conventional fall protection that leave California employees exposed to fall hazards where employees covered by OSHA's standard would be protected. For example, the State Plan allows for a fall protection plan when conventional fall protection is "clearly impractical," as opposed to the federal requirement for a showing of infeasibility, and exempts work of "short duration" and "limited exposure" from any fall protection, regardless of height. The standard does not define the terms "clearly impractical," "limited exposure" or "short duration." A broad interpretation of these terms has the potential to render ineffective the general requirement for conventional fall protection.

In addition, the Cal/OSHA standard for residential framing suspends requirements for conventional fall protection for several activities. Such activities include, work on joists, rafters or roof trusses on center spacing not exceeding 24 inches, and more than 6 feet from an unprotected side or edge, and work installing fascia or starter board inside a braced gable end truss. Although California's residential framing section requires fall protection, regardless of height, for roof sheathing on steep (7:12) roofs, the standard permits use of slide guards in lieu of conventional fall protection on less steep roofs up to 15 feet.

California's roofing requirements also permit use of alternatives to conventional fall protection that are not permitted in OSHA's standard. For example, California's standard allows protection by parapets of 24 inches for some roof work, use of a warning line without a safety monitoring system for low sloped roofs, and options for roof jack systems and eave barriers as alternatives to conventional fall protection systems that are not options under OSHA's standard. It is not clear to OSHA whether the requirements for these are equal to guardrail systems or other permitted systems.

Lack of a Cohesive Residential Fall Protection Standard or Compliance Policy

California's standards do not need to be organized in the same manner as federal OSHA's requirements. However, to be at least as effective as federal OSHA's standard, the California requirements must be described in a manner which makes clear to residential construction employers what requirements apply to residential construction

activities, and that those requirements are at least as effective as the federal OSHA requirements.

California's standards do not define "Residential construction." Instead, fall protection provisions for residential construction work are housed across multiple articles with vertical requirements for residential wood and light gage steel frame construction and residential roofing activities. Within this organization scheme, there are ambiguities. For example, under California's residential framing requirements, several paragraphs permit the use of "any other means prescribed by CSO Article 24" as fall protection, but it is unclear whether this language incorporates Article 24's requirement to use conventional fall protection except where "clearly impractical," or whether employers may select any conventional or non-conventional measure in Article 24. It is also unclear to federal OSHA whether California's general fall protection requirements, such as the requirement to cover holes and openings, or to have protection for open sides and edges at heights of seven and one half feet or greater, still apply during residential framing or roofing.

OSHA notes that since the Cal/OSHA standard was promulgated, there have been additional technological advances in the types and capability of commercially available fall protection equipment, and OSHA rarely encounters real-world situations in which conventional fall protection is truly infeasible. In addition, OSHA notes that California's trigger heights and other requirements for general (non-residential) construction have many of the same issues as the residential construction requirements. Steps to resolve the residential issues could help resolve the general construction issues as well.

In the interest of providing California's workers the same, or higher, level of protection as afforded under OSHA's program, we ask that you work with us to fully address the key issues highlighted above and any other issues that may come to light in the course of our discussions. We are eager to start discussions to come to an agreed upon plan of action to render California's requirements for fall protection in residential construction "at least as effective" as OSHA's requirements.

You mentioned in your letter that you are willing to hold a stakeholder meeting to discuss potential changes to California's fall protection requirements. We support this concept and are willing to work with you prior to such a meeting to develop an effective agenda that conveys the changes necessary to address the issues at hand. Again, thank you for your continued cooperation in working to ensure safe and healthy workplaces for California's workers.

Sincerely,

KEN NISHIYAMA ATHA
Regional Administrator