



Contractors Beware: You May Have “Constructive” Knowledge of Safety Violations and Not Even Know It

by Ryan McLane

The Kentucky Court of Appeals issued a decision this summer reinforcing the strict burden placed on contractors to comply with safety regulations. Specifically, the decision requires employers to take personal responsibility to ensure that their employees on the work site follow those safety regulations. To issue a monetary penalty for a safety violation, the Kentucky Occupational Safety and Health Review Commission (KOSHRC) must find that the employer had knowledge of the violation. However, the knowledge requirement includes either “actual” or “*constructive*” knowledge. With that in mind, contractors need to understand that KOSHRC and the Kentucky Courts interpret “constructive knowledge” very broadly.

In *David Gaines Roofing, LLC v. KOSHRC*, the Court of Appeals affirmed a \$4,000 penalty against a small roofing contractor for safety violations of its employees. A compliance officer with the Kentucky Labor Cabinet responded to telephone complaints that roofers working for Gaines Roofing were not wearing fall protection safety equipment. The officer visited the construction site, called the owner to the site, and issued the safety citation. The owner, Mr. Gaines, appealed the citation arguing that: 1) he had no actual knowledge of the violations; 2) he provided safety training to employees; and 3) he provided employees with safety equipment, which he required them to wear.

The Court nevertheless found that, despite Mr. Gaines efforts, the violations existed and he had *constructive* knowledge of them. Gaines responded by claiming that he cannot be present at each work site to be certain that his workers comply with his instructions on safety. Gaines further argued that his small company cannot afford to hire foremen or supervisors to perform that oversight. The Court had no sympathy for Mr. Gaines and labeled his argument “troubling and without merit.” The fact that Gaines Roofing had prior safety violations also harmed its defense.

The Court ultimately ruled that “constructive knowledge” includes the responsibility to use reasonable diligence to inspect work areas and anticipate hazards. This includes the duty to actively supervise employees on the job. This standard is unforgiving, and the Court of Appeals made it clear that it will not cut small contractors a break. The lesson learned from the *Gaines Roofing* case is that training and providing safety equipment is not enough. Contractors large and small must personally make sure that workers on site are following their training and using their safety equipment.

Luckily, in the *Gaines Roofing* case no one was injured. The case simply dealt with a \$4,000 penalty. However, had a worker actually been injured, the contractor would suffer enormous civil liability. Making matters worse, a violation of a safety regulation may negatively affect a contractor’s insurance coverage for the accident. Such liability without insurance coverage could completely devastate many companies.