

Utah Rejects Multi-Employer Worksite Doctrine: General Contractor Not Responsible for Occupational Safety of All Workers on Worksite

Author(s) - Cole Wist, and Trey Overdyke
Holland & Hart News Update

2/19/2014

In a significant break from federal rulings, the Utah Supreme Court recently rejected the multi-employer worksite doctrine as incompatible with the Utah Occupational Safety and Health Act (UOSH Act). *Hughes General Contractors, Inc. v. Utah Labor Comm.*, 2014 UT 3. Generally, the multi-employer worksite doctrine makes a general contractor responsible for the safety of all workers on a worksite, including the safety of employees of subcontractors and other third parties. In rejecting the legal doctrine (which has developed under the federal Occupational Safety and Health Act (OSH Act)), the Utah Supreme Court held that Utah's state occupational safety and health law regulates conduct between employers and employees and does not permit a general contractor to be held liable for the safety violations of a subcontractor.

General Contractor Appealed Safety Violations by Subcontractor

Hughes General Contractors oversaw a construction project at Parowan High School involving over 100 subcontractors. One of the subcontractors, B.A. Robinson, performed masonry work on the project. The Utah Occupational Safety and Health Division found that scaffolding used and erected in connection with the masonry work violated the UOSH Act. The UOSH compliance officer determined that Hughes was responsible for the safety conditions for B.A. Robinson's employees under the multi-employer worksite doctrine. The Division cited and fined both Hughes and B.A. Robinson for the scaffolding violation.

Hughes contested the citation, arguing against the legal viability of the multi-employer worksite doctrine under the UOSH Act. An Administrative Law Judge upheld the citation under the doctrine and the Utah Labor Commission's Appeals Board affirmed. The Appeals Board looked at the governing Utah statute, section 34A-6-201, found that it "mirrored its federal counterpart" and applied federal case law that recognized the multi-employer worksite doctrine to hold Hughes liable for the safety violations of a subcontractor. Hughes appealed to the Utah Court of Appeals which asked the Utah Supreme Court to decide the applicability of the multi-employer worksite doctrine under the UOSH Act.

Workplace Safety Obligations Extend Only to Employers under the UOSH Act

Similar to its federal OSHA general duty clause counterpart, the UOSH Act requires each Utah employer to provide "a place of employment free from recognized hazards that are causing or are likely to cause death or physical harm to the employer's employees and comply with the standards promulgated under this chapter." Utah Code § 34A-6-201(1). At the trial level, the Utah Labor Commission read this provision broadly to extend the safety responsibilities to anyone with supervisory control over a particular worksite. The Utah Supreme Court instead interpreted this provision as focused on the employment relationship. The Court held that the duty to furnish a workplace free from recognized hazards and to comply with the UOSH Act standards is one that extends between employer and employee. The Court stated "the relevant control is not over the premises of a worksite, but regarding the terms and conditions of employment." In determining whether an employment relationship exists, the relevant factors include the existence of covenants or agreements, the right to direct and control the employee, the right to hire and fire, the method of payment (*i.e.*, wages versus payment for a completed job or project) and the furnishing of equipment.

Applying its analysis, the Court found Hughes was not an "employer" in connection with the work done by B.A. Robinson's workers. B.A. Robinson was the sole employer involved in the masonry work and controlled the workers involved in the scaffolding problems that resulted in the citations. Hughes did not have any of the rights of control that would deem it an

employer in connection with the work done by B.A. Robinson's employees (e.g., no right to hire or fire, no payment of wages, etc.).

Utah Safety and Health Act Distinguished from Federal Law

Numerous federal courts have recognized the multi-employer worksite doctrine under the federal OSH Act. However, the Utah Supreme Court analyzed the structure of the federal OSH Act and found that it sets forth the duty to comply with certain safety standards in separate sub-sections of the statute. By contrast, the Court held that Utah law requires "each employer" to provide a safe workplace and to comply with promulgated standards in a single provision of the statute.

Second, the Utah Supreme Court distinguished its decision because of the lack of administrative deference that applied in interpreting Utah law. The Court noted that when federal courts resolve ambiguity in a statute, the courts look to the interpretation of the statute provided by the relevant federal agency and defer to the agency's viewpoint as long as it is based on a permissible construction of the statute. The Court wrote that federal courts typically have not rendered an independent assessment of the meaning of the relevant OSH Act provision and instead have deferred to the federal agency's regulation that construes the statute to allow for the multi-employer worksite doctrine. However, Utah has not adopted a similar standard of judicial deference to an agency's resolution of a statutory ambiguity so the Court conducted its own independent determination to find that the Utah law did not allow for the multi-employer worksite doctrine.

Important Victory for General Contractors

It is unclear what broader impact this decision may have. For now it is a significant victory for general contractors overseeing projects in Utah. Time will tell if state courts in other occupational safety and health state plan jurisdictions will follow Utah's lead in rejecting the multi-employer worksite doctrine. Should these courts flirt with the idea, they may find the Utah Supreme Court's analysis to be a helpful road map. Further, it will be interesting to watch the impact this may have on the multi-employer worksite doctrine in federal OSHA jurisdictions. We will keep you posted on any new developments on this issue.

Related Practices

[Labor and Employment](#)
