



Liability

Legal

Obligation

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The Ripple Effect: State Citations and General Contractor Liability

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Employer Solutions Law is seeing more frequent use of “add-on” State Citations, where L&I **holds General Contractors liable for safety violations by their subcontractors**. This trend underscores the importance of clear safety oversight and compliance coordination on every jobsite.

The Origins of “State”

A General Contractor’s liability for a subcontractor’s safety violation originates from the case *Stute v. P.B.M.C., Inc.*, 114 Wn.2d 454, 788 P.2d 545 (1990). Precluded by the Industrial Insurance Act from suing his subcontractor employer, the injured Mr. Stute brought suit against the General Contractor alleging negligence based on a WISHA violation for not having scaffolding. The lower courts found no liability because Stute was not an employee of the General Contractor. The Washington Supreme Court reversed, holding that “[e]mployers must comply with the WISHA regulations to protect not only their direct employees but all employees on the job site.” *Stute*, 114 Wn.2d at 460. Critical to the court’s analysis was “the **right** to exercise control and not the actual exercise of control,” and “general supervisory functions were sufficient to establish control.” *Stute* at 461 (Emphasis added).

The Washington Supreme Court went further in *Crisostomo Vargas v. Inland Wash., LLC*, 194 Wn.2d 720, 733, 452 P.3d 1205 (2019), where it held that a general contractor’s specific duty to ensure compliance with WISHA regulations is ***per se*** and cannot be disputed.

Was the unsafe practice “foreseeable” and what did the GC do to discover and prevent it?

...If there is no document, it did not happen.

“A general contractor **always** owes this duty under WISHA – no analysis of whether the general contractor retained control is necessary.” *Vargas*, 194 Wn.2d at 736 (Emphasis in original). The court also held that vicarious liability would attach to the General Contractor even if it delegated its authority to a subcontractor who violated WISHA regulations. Suffice to say, a General Contractor cannot defend a Stute violation by arguing a lack of control over the subcontractor.

All is not lost. The Department of Labor and Industries Compliance Manual identifies four elements are required to support a Stute citation, commonly known as “HECK.” These are:

- 1) Hazard,
- 2) Exposure,
- 3) Code, and
- 4) Knowledge.

A General Contractor can **challenge the underlying subcontractor citation** which, if upheld, establishes the hazard, the exposure and the code violation. But what if the subcontractor violation is indisputable? Then, the only real battleground for a Stute violation is the knowledge element. The knowledge required is not just actual knowledge but also includes what should be known in the exercise of reasonable diligence.

“I didn’t know the subs weren’t following the code.”

Unfortunately, because the subcontractor’s worker is not an employee of the General Contractor, there is **no RCW 49.17.120(5) Unpreventable Employee Misconduct defense** to a Stute Violation. Nevertheless, the Department and Board Judges appear to apply the UEM analysis to the knowledge element in a Stute Violation. Was the unsafe practice “foreseeable” and what did the General Contractor do to discover and prevent it?

To challenge a Stute Violation on the knowledge element, a General Contractor must be **prepared to present evidence of reasonable efforts to identify** and correct subcontractor safety issues. While a General Contractor is not required to provide “direct, continuous supervision” of a subcontractor, *In re Exxel Pacific*, 96 W182 (1998), absence is not a defense. “[A] general contractor cannot shirk its duties merely by vacating the premises. *Vargas, supra*.

Your Internal Inspection Program

Employer Solutions Law advises and assists its General Contractor clients in developing a robust inspection program with documented subcontractor warnings, corrections and terminations for unsafe practices. As always for the Department and Board Judges, if there is not a document, it did not happen. So, the best protection against a Stute Violation is to **show that you are constantly checking on your subcontractors at random**, documenting when you find unsafe practices, documenting the corrections you direct, warning subcontractors of repeated unsafe practices, and terminating subcontractors that continue to re-offend. Without the documented evidence that you are doing everything reasonable to discover and prevent subcontractor safety violations, you are unlikely to be able to avoid a Stute Violation.

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