

January/February 2000

"OSHA's Fall Protection Standard - It's Back" by Julie A. Pace

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**WEBMASTER NOTE:** The comment period for the following expired 1/24/2000.

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We are in a situation in which failure on the part of our industry to participate, both individually and as a whole, could result in the alternative fall protection section of the standard being deleted or adversely altered. You may be required to use safety nets, personal fall arrest systems (PFAS) and guardrails for all phases of construction over six feet in height, regardless of the practicality or feasibility of doing so. You may be required to have workers tie off to trusses that have not been designed to handle such stress loads. Engineering tests may have to be redone and trusses redesigned. Further, the trusses may not comply with OSHA's specific technical requirements; for example, can a 2x4 satisfy OSHA's 5,000 pound test?

#### **KEY DEFINITIONS ARE MISSING**

Residential construction is not defined. Controlled Access Zone (CAZ) needs clarification. Low slope and steep slope roofs are not adequately defined for purposes of complying with the standard. Most significantly, the standard fails to address any definition for alternative safe working practices that should be used when a company performs work under the alternative fall protection plan.

Personal injury attorneys may be waiting to sue companies who are caught in the horns of a dilemma: Do companies force workers to complete tasks in a manner that attempts to comply with OSHA's standard to avoid OSHA fines, while at the same time potentially subjecting the worker to a greater hazard, thereby being sued if such a worker is injured? In some states, workers' compensation is not the sole remedy and general homebuilders or other subcontractors at a job site can be sued even if the employee collects workers' compensation from his direct employer. What do companies do when employees refuse to perform tasks in the manner that the fall protection standard directs because they view it as unsafe and dangerous? OSHA states that employees are engaged in protected activity when they refuse to complete work because of unsafe working conditions.

#### **BACKGROUND**

In 1995, OSHA implemented Subpart M. Many problems were quickly noted as the standard was applied to residential construction. "Experts" were claiming that, in order to comply with the

standard, different methods of construction must be used. For example, roofs could be constructed on the ground and then lifted by crane onto the home, or a telephone pole could be installed to allow workers to tie off to the pole before performing work (i.e., setting trusses, installing tile or shingles, performing stucco work, etc.). One such expert estimated that complying with the standard could increase the cost of constructing homes by 20 percent.

The standard generally mandates that all workers use safety nets, PFAS or guardrails if they work at heights of six feet or greater. The primary focus of the fall protection standard was commercial projects. The manner in which the standard has been written, however, means that it applies to every employee who works at heights of six feet or greater, which includes carpenters, roofers, electricians, plumbers, lathers, air conditioning handlers, drywallers, etc.

## **HIGHLIGHTS OF CURRENT STANDARD**

All employees who work at six feet or higher must have written certification in their personnel files that they have received fall protection training. Every residential construction project must have a written fall protection plan. The written plan must be posted at each site and must include the names of individuals working at the site.

The three conventional means of fall protection (safety nets, guardrails or PFAS) must be used, unless it is infeasible or the worker would be subjected to a greater hazard. The two exceptions mean expensive case-by-case determinations. The technical requirements of using the three conventional methods are quite specific and generally not attainable in residential construction.

OSHA failed to focus on residential construction and the differences that made the fall protection standard unworkable and infeasible (i.e., weather conditions or tile roofs). Roofers have tried to safely develop a system of tying off while installing tile, but have experienced tangled lines that cause tile stacks to fall creating a greater safety hazard. As yet, roofers and carpenters have not been able to determine how to install an anchorage point that complies with OSHA for purposes of setting trusses or installing tile. The list goes on and on.

## **COMPLIANCE DIRECTIVES**

A compliance directive was issued on December 8, 1995, but it addressed only some of the problems with the standard as it applied to residential construction. A new compliance directive was issued on June 18, 1999, but it adds more confusion because it creates four groups and does not address the application of the standard to various trades or tasks. The standard itself does not discuss four groups and it appears the categories were arbitrarily selected. Again, the directive demonstrates that the standard as it is currently written is unworkable.

For more details, you can review the actual standard, 29 CFR 1926.500 et. seq., or retrieve the Advanced Notice of Proposed Rulemaking ("ANPRM") from OSHA's web site (<http://www.osha-slc.gov/e-comments-fallprotection.html>). ANPRM is primarily a list of questions in which OSHA is seeking responses. The primary audience for the questions is safety product manufacturers and seeks comments about new products that may be used by residential construction trades. Unfortunately, despite all of the hard work put forth by the residential construction industry

during the past five years regarding the development of training programs, workable plans, key definitions and alternative safe work practices, OSHA did not contact industry representatives to seek input regarding the ANPRM.

## ARIZONA

As an example of proactive leadership and joint efforts, the Home Builders Association of Central Arizona (HBACA) and WTCA members worked closely with the Arizona Division of Occupational Safety and Health (ADOSH) to collaborate on workable provisions and alternative fall protection plans. This effort began with a six-month industry-wide variance from Federal OSHA's fall protection standard in Arizona in 1996. The time period was used to identify technical deficiencies in the standard, to develop workable provisions, to add flesh to the bone of the alternative fall plans and to provide industry-wide training to thousands of workers. The plans developed in Arizona are actually more comprehensive than the standard adopted by Federal OSHA. There are written plans for 11 different trades. The joint industry and government effort in Arizona has been successful and can serve as a model for other local organizations like WTCA chapters. Federal OSHA should also follow a cooperative approach with industry to resolve the issues surrounding the fall protection standard.

By press time, the National Association of Home Builders (NAHB), the Home Builders Association of Central Arizona (HBACA) and WTCA will have provided OSHA with workable provisions and definitions that make sense to include in a revised fall protection standard. This partnership shows the strength that can be developed within an industry whose various organizations work together with a united voice and purpose.

There are numerous workable provisions and definitions that make sense to include in a revised fall protection standard. NAHB and HBACA have summaries of proposed provisions that you may want to review and support when you make your comments. Please feel free to contact NAHB or HBACA for a copy of the draft of workable provisions at 602/274-6545 or fax your request to 602/234-0442.

## COMMENT PERIOD

Your comments are necessary in order to influence the revisions to the standard. The goal is to implement a fall protection standard with workable provisions that enhance worker safety at a reasonable cost and avoid confusion. Comments regarding the fall protection standard must be submitted by January 24, 2000, to:

1. OSHA Docket Office  
Docket S206C Room N2625  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, D.C. 20210
2. Fax (10 pages or less) to: 202/693-1648

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