

DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH
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Juliann Sum, Chief

March 1, 2016

Andrew Cardin
S.V.P. Operations
DigitalPath, Inc.
1065 Marauder Street
Chico, CA 95973

Re: Title 8 Section 1669

Dear Mr. Cardin:

This letter is provided in response to your inquiry to the Division of Occupational Safety and Health (Cal/OSHA) regarding fall protection requirements for short duration work in Title 8, section 1669(c) of the Construction Safety Orders. The content and conclusions of this letter are based only on the facts described below and responsive only to the initial requester. They may not be construed as a statement of general Cal/OSHA policy or general interpretation of the regulations referenced in this letter.

QUESTION:

In your letter dated December 30, 2015, you requested clarification regarding the exception for employees to be provided with fall protection during short duration work pursuant to Title 8, section 1669(c). You explained that the short duration work of employees consisted of installing wireless internet service equipment on the roofs of private residences and businesses. You also stated that employees are exposed to an unprotected fall for longer times if they install fall protection on roofs compared to performing the work with no fall protection.

APPLICABLE REGULATIONS:

Title 8 section 1669(c) provides the following exception to fall protection requirements of Article 24 of the Construction Safety Orders¹:

When the work is of short duration (i.e., non-repetitive) and limited exposure and the hazards involved in rigging and installing the safety devices required by this Article equals or exceeds the hazards involved in the actual construction, these provisions may be

¹ Safety requirements for the installation of internet service equipment are normally covered by the Telecommunications Safety Orders (Title 8 sections 8600 through 8617), but these orders do not address fall protection on roofs. The Title 8 General Industry Safety Orders section 3210 refers to the Construction Safety Orders for fall protection from locations used infrequently by employees.

temporarily suspended, provided adequate risk control is recognized and maintained under immediate, competent supervision.

Title 8 section 1670(a) of the Construction Safety Orders requires personal fall protection as follows:

§1670. Personal Fall Arrest Systems, Personal Fall Restraint Systems and Positioning Devices.

(a) Approved personal fall arrest, personal fall restraint or positioning systems shall be worn by those employees whose work exposes them to falling in excess of 7-1/2 feet from the perimeter of a structure, unprotected sides and edges, leading edges, through shaftways and openings, sloped roof surfaces steeper than 7:12, or other sloped surfaces steeper than 40 degrees not otherwise adequately protected under the provisions of these Orders. Note: (1) Requirements relating to fall protection for employees working at elevated locations on poles, towers and other structures are provided in Section 2940.6(b) and (c) of the High Voltage Electrical Safety Orders. (2) Requirements relating to fall protection for employees working on poles, towers, or similar structures are provided in Section 8615(g) of the Telecommunications Safety Orders. (3) Requirements relating to fall protection for employees working in roofing operations are provided in Section 1730 of the Construction Safety Orders.

RESPONSE:

For operations covered by the Construction Safety Orders, employers are normally required to provide fall protection for employees whose work exposes them to falls greater than 7-1/2 feet. However, the exception provided in section 1669(c) would permit fall protection requirements to be temporarily suspended under certain circumstances if all conditions are met.

The employer bears the burden of proof for any exception to a Title 8 safety requirement, and the employer must establish that it has complied with all the requirements of the exception. In addition, if employees can be protected by falls by another alternative to personal fall protection equipment, then the employer is responsible for implementing such an alternative.

For the exception contained in 1669(c) to apply, the employer must prove all three elements of the exception:

- 1) The work is of short duration (i.e., non-repetitive) and limited exposure;
- 2) The hazards involved in rigging and installing the safety devices equal or exceed the hazards in the actual construction; and
- 3) The employer provides adequate risk control under immediate and competent supervision

The California Occupational Safety and Health Appeals Board has established case law for the exception in 1669(c) in several Decisions After Reconsideration, which may help clarify the requirements.

1ST Element of the Exception: Work of Short Duration and Non-Repetitive, Limited Exposure to a Fall

The Appeals Board determined that work of approximately one minute was of short duration. (*Ruffco Construction*, Cal/OSHA App. No. 90-1006, Decision After Reconsideration (May 31, 1991).) In *McLean Steel Inc.*, Cal/OSHA App. No. 93-1851, Decision After Reconsideration (Aug. 26, 1997), the Appeals Board found that a single, three-minute exposure to a fall of was also work of short duration. However, the Appeals Board decided that work of "a few instances lasting 2-5 minutes each," exposing employees to falls of 75 feet, was not work of short duration and limited exposure. (*Anning-Johnson Company*, Cal/OSHA App. No. 80- 517, Decision After Reconsideration (June 25, 1982).)

You included a list of tasks you have determined as short duration (non-repetitive) and stated that installers would perform one or more of the following tasks at a customer site:

1. Swapping out the CPE Feed Horn – up to 3 minutes
2. Re-seating the cable into the CPE – 30 seconds
3. Replacing the RJ45 end – up to 5 minutes
4. Visual assessment for incoming signal – up to 5 minutes
5. CPE re-alignment – up to 3 minutes
6. Re-sealing the mount – up to 5 minutes
7. Fastening down a loose cable – up to 10 minutes

Although the Appeals Board decisions provide guidance, there is no specific time limit for "short duration" and employers should not speed up work to meet an arbitrary time limit. Doing so could endanger workers and may violate other safety and health regulations. Some activities may still be considered "short duration" tasks even when employers and employees take additional time in order to ensure safety, depending on the totality of the circumstances. Short duration work is determined on a case-by-case basis for each jobsite based on the site conditions, such as but not limited to fall distance, slope of the roof, roof surface conditions, weather conditions and other hazards.

2nd Element Of The Exception: Hazards Involved In Rigging And Installing The Safety Devices Equal Or Exceed The Hazards in the Actual Construction

The Appeals Board has found that the employer must provide factual evidence that rigging of safety devices would be more hazardous than working without them (*Bernards Bros. Inc.*, Cal/OSHA App. 78-700-701, Decision After Reconsideration (July 27, 1981).) The employer must show "that the types of fall protection provided for in Sections 1669 and 1670 are more hazardous to install than the work being performed." (*Petersen Builders, Inc.*, Cal/OSHA App. 91-057, Decision After Reconsideration (Jan. 24, 1992).)

According to your letter, the time employees are exposed to unprotected falls is greater when fall protection is installed as compared to when employees complete their work without the use of fall protection. You also stated that the average time of fall protection anchor installation is 15 minutes. You should consider exploring safer methods of locating rafters and installing anchor points than those described in your letter, which may reduce exposures during fall protection installation.

For those cases where it is verified that rigging or installing of fall protection introduces greater exposure to falls or other greater hazards, Cal/OSHA may consider the second element of the exception in section 1669 to be met.

3rd Element of the Exception: Adequate Risk Control Under Immediate And Competent Supervision

The Appeals Board clearly defined what is needed to meet the requirements of the third element of the exception in section 1669(c):

Adequate risk control exists when all of the following factors are present at the work site: the employees are trained and experienced in the work they are doing; the employer has a well-designed safety program which addresses the hazards inherent in the employees' work; and the safety program is applied on the project by immediate, competent supervision. (*Pacific Roof Structures*, Cal/OSHA App. 84-1040, Decision After Reconsideration (May 21, 1986).)

"'Competent supervision' means the ability to act to avert the hazards inherent in working while exposed to a fall without a safety belt and lifeline attached to a secure anchor." (*Duke Timber Construction Co., Inc.*, Cal/OSHA App. 81-347, Decision After Reconsideration (August 19, 1985)). The supervisor must be "paying particular attention" to the worker in question and not engaged in other tasks. (*McLean Steel Inc.*, Cal/OSHA App. No. 93-1851, Decision After Reconsideration (Aug. 26, 1997); see also *Ruffco Construction, supra*, Cal/OSHA App. No. 90-1006, Decision After Reconsideration (May 31, 1991); *Duke Timber Construction Co., Inc.*, Cal/OSHA App. 81-347, Decision After Reconsideration (August 19, 1985).)

You included the measures that would be taken by your company to control the risk, including how the short duration work would be supervised:

1. Requiring that fall protection be installed for any work that is to be conducted within 6 feet of any edge of the roof or the work is performed from a ladder.
2. Requiring competent supervision of the exposed employee performing the task of short duration for the duration of the task, including:
 - i. A Job Hazard Analysis (JHA) is conducted prior to commencement of work.
 - ii. Clear communication and full visibility maintained between the competent person on the ground and the exposed employee performing the task.
 - iii. The focus of the competent employee would remain on the work area and the work being performed by the exposed employee and would not allow any other task to distract from supervising the exposed employee.
 - iv. The training of the exposed employee performing the task and the competent employee would be documented and retained for review.

Employees need to be trained and experienced in the work they are doing, knowledgeable of the worksite hazards and be familiar with and take all precautions necessary to prevent falls from the roof. The employer's Injury and Illness Prevention Program, required by Title 8 section 3203, must also contain specific components and procedures addressing the fall hazards. In addition, the employer must provide

direct and immediate supervision of the employee on the roof by a competent person not engaged in other tasks.

CONCLUSION

If all three elements of the exception contained in section 1669(c) are met as described above, fall protection would not be required for employees performing a task of short duration. Whether the exception applies is determined on a case-by-case basis. In each case, the employer has the burden of proof for showing all three elements have been met.

I hope this provides you with information you need. If you have any further questions regarding this or related safety concerns, please contact me at 925-270-9791 or eberg@dir.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Berg". The signature is written in a cursive style with a large initial "E" and a long, sweeping underline.

Eric Berg
Deputy Chief
Research and Standards