

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

June 26, 2017

Justin Harvey, CSP
Safety Manager
Truebeck Construction
201 Redwood Shores Pkwy Suite 125
Redwood City, CA 94065

RE: Controlling Employer

Dear Mr. Harvey:

I am writing in response to your letter to Cal/OSHA Consultation dated June 13, 2017, requesting clarification regarding the designation of a controlling employer for a "multi-prime contract."

Labor Code §6400(b) sets forth the Cal/OSHA multi-employer workplace rule and governs the roles of the various employers who may be cited for health or safety violations at a worksite. It provides, with regard to controlling employers:

(b) On multiemployer worksites, both construction and non-construction, citations may be issued only to the following categories of employers when Cal/OSHA has evidence that an employee was exposed to a hazard in violation of any requirement enforceable by the division:

* * * * *

(3) The employer who was responsible, by contract or through actual practice, for safety and health conditions on the worksite, which is the employer who had the authority for ensuring that the hazardous condition is corrected (the controlling employer).

* * * * *

Whether an employer is a controlling employer cannot be designated by Cal/OSHA in advance. Such a determination would be made by Cal/OSHA during an enforcement inspection and would depend on numerous factors identified in the inspection. This letter serves to provide you with information (in the next paragraph) about some of the factors considered during an inspection.

Since the controlling employer definition in Labor Code §6400(b)(3) requires responsibility for safety and health conditions on the worksite by contract or through actual practice, Cal/OSHA looks first to see if there is a contract giving a particular employer responsibility for safety and health oversight at the worksite. If there is no contract giving a particular employer responsibility for safety and health oversight at the worksite, Cal/OSHA will look to

the actual practice of the alleged controlling employer. For example, if one contractor has the authority to enforce worksite safety or health rules, requirements for safety or health trainings or safety or health inspections as to other contractors at the site, or has the authority to stop work or to remove another contractor from the jobsite for health or safety violations, the contractor with that authority may be found to be the controlling employer.

Please note that even if a particular employer is not determined to be the controlling employer, the employer may still be held responsible for health or safety violations as an exposing, creating, or correcting employer, as provided in Labor Code §6400(b).

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Berg". The signature is stylized with a large, sweeping "E" and "B".

Eric Berg
Deputy Chief
Research and Standards