Contractor Safety

INCIDENT

A former Naples framing contractor is headed to prison for violating federal fall protection standards.

A U.S. district judge in Fort Myers has sentenced Stalin Rene Barahona, the former owner of the now dissolved SB Framing Services Inc. in Naples, to 30 days in prison for one count of willfully violating a federal standard for fall protection.

Barahona pleaded guilty to the charge, under the information brought by the U.S. Attorney's Office.

The charge stemmed from a fall that killed one of Barahona's employees during work on a new home in North Naples, within Marbella Isles, a luxury community by GL Homes off Livingston Road.

The fall happened Sept. 26, 2015, hours after Barahona drove two of his employees to the job site.

According to court records, one of those employees, Selvin Velasquez, a residential framer, lost his balance after leaning over a rake beam to drill a hole in a concrete block while working on the roof, then fell to the ground from 19½ feet, striking his head on a concrete slab. Velasquez was taken to a hospital, where he later died of his injuries.

Barahona will begin serving his sentence Feb. 26.

"This enforcement action demonstrates that OSHA will utilize every resource available to ensure that safety and health standards are followed to protect employees from potential risk," said OSHA Regional Administrator Kurt Petermeyer in Atlanta, in a news release.

OSHA determined that Velasquez, 32, would not have died from the fall if the required fall protection equipment had been provided.

According to court records, Barahona saw Velasquez and his other employee working on the roof without the proper equipment but "failed to intervene to ensure his workers' safety." Although the contractor owned the equipment, it sat in his truck unused on the day of the fatal fall.

OSHA found that in the weeks leading to Velasquez's death, including on the day of the fall, other contractors warned Barahona repeatedly about his employees not wearing the required equipment on the job.

OSHA also found that Barahona, an experienced carpenter, had spent 15 years in the construction industry and had taken an eight-hour OSHA worker safety course while working as a foreman with his last employer, so he should have known about the dangers.

Barahona signed a plea deal in July 2019, giving up his right to a trial by jury. As part of the deal, he paid a special assessment of $10 to the court.

Based on the charge, he could have received a maximum prison sentence of six months and faced a fine of up to $250,000.

Barahona's agreement doesn't include a fine, which according to the judgment has been waived.

The judgment won't require any restitution.

In January 2016, OSHA stated in a news release that it had cited SB Framing Services with one willful and one serious violation.

The company's failure to provide workers with a workplace safety training program resulted in a serious violation, while the one leading to an employee's death was categorized as willful. At the time, proposed penalties totaled $53,900.

OSHA records show that Barahona reached an informal settlement with the agency in January 2016. Fines were reduced to $43,120 for the two violations.

According to court records, A&C Construction and USI Contractors hired SB Framing as a subcontractor to install sheathing and

framing at the new Marbella Isles development.

Court records show the job the company landed at Marbella Lakes was its first contract after incorporating. SB Framing began operating in August 2015 and had five employees.

The state administratively dissolved the company Sept. 23, 2016, after it failed to file an annual report.

The court recommended Barahona serve his sentence close to home, but it appears that likely won't be the case.

Naples attorney Neil Morales, who represents Barahona, said his client has been assigned to a medium-security private prison, the D. Ray James Correctional Institution, in Folkstown, Georgia, and he is concerned for his safety.

For a first offense such as this one, Morales said Barahona should be doing his time in Glades or Charlotte counties, where there are minimum-security detention centers that would give him more freedom and not put him with felons who have committed more serious crimes, such as thefts and assaults.

Morales describes Barahona as a hard-working family man who is sorry for making mistakes that led to his employee's death. His employee, he said, was also a friend.

Barahona, he said, gave up his business because of the incident and went to work for another construction company, where he would not have responsibility over other workers anymore, realizing there was more to the job than he expected.

"He's not the kind of person that would ever do this again, or let this happen again," Morales said.

Barahona appreciates that he was offered a plea deal, his attorney said, but he should not be treated any differently from others who have been found guilty of similar violations but not faced prison time.

"I think they're trying to make an example of him," Morales said. "I was hoping they would give him a suspended sentence."

Barahona also fears deportation, Morales said. He is a Honduran national, who has been in Florida legally for decades under a temporary protective status, but it must be renewed annually.

“Based on everything we’ve studied about this and everything that we’ve seen, this is not a deportable offense,” Morales said. “It doesn’t make him an inadmissible alien.”

Velasquez’s family did not seek any restitution, Morales said, realizing that Barahona is a good man who made some bad decisions.

NEED TO KNOW

When contractors perform services at employer worksites, a detailed contract and contractor safety program protects the health and safety of both employees and contractors. The employer and the contractor share an obligation to communicate planned work activities, the hazards involved, and the contracted tasks, as well as the training, tools, and equipment that all employees will need.

BEFORE AGREEING TO WORK WITH A CONTRACTOR, REVIEW THE FOLLOWING DATA THAT GIVES INSIGHT TO THEIR SAFETY CULTURE AND PERFORMANCE:

- History of safety and environmental regulation violations.
- Injury and loss history.
- Total Recordable Incident Rate.
- Experience modification rate (ex-mod).
- Job and task hazard analysis procedures and results.
- Written safety programs and policies.

ENSURE THAT YOU OUTLINE REQUIREMENTS IN THE WORK CONTRACT AND IN CONTRACTOR MANUALS SO THERE IS A CLEARLY COMMUNICATED EXPECTATION OF WORKPLACE SAFETY. TOPICS TO CONSIDER INCLUDE:

- Company and contractor safety responsibility and emergency contact information.
- A description of hazardous areas, equipment, materials, and tasks at the worksite.
- Safety programs that govern the safe work practices for the contracted job.

- Equipment, tools, and supplies that the contractor or the employer need to provide.
- Personal protective equipment (PPE) required at the worksite and for job tasks.
- Training and certifications that contracted employees need prior to conducting work.
- Reporting requirements and procedures for injuries, illnesses, hazards, and safety concerns.
- The expectation for a drug and alcohol free workplace.

IT IS IMPORTANT THAT CONTRACTORS MATCH OR EXCEED THE SAFETY CULTURE AND STANDARDS OF THE EMPLOYER. GENERAL SAFE WORK PRACTICES TO EMPHASIZE INCLUDE:

- Lockout/Tagoutprocedures for equipment on-site.
- A list of permit-required and non-permit-required confined spaces on-site.
- Heat illness prevention procedures.
- Trenching and excavation procedures and the location of utilities.
- A list of chemicals used on-site and access to safety data sheets.
- Areas where fall protection is required.
- Vehicle, driving, and traffic safety rules for the worksite.
- Good housekeeping methods.
- Worksite safety inspection processes and frequency of inspections.
- Worksite security procedures.
- Personal conduct requirements.

TRAINING IS IMPORTANT TO FAMILIARIZE EMPLOYEES WITH HOW TO CONTROL JOB HAZARDS AND PREVENT INJURIES. SUGGESTED INITIAL AND ONGOING TRAINING TOPICS INCLUDE:

- A worksite safety orientation including a discussion of the hazards associated with the tasks of the job to be performed.
- The contents of contractor safety manuals.
- Pre-job briefings and shift meetings.
- Safety tailgate topics specific to the worksite and job

tasks.
- Trainings that are required to control a hazard, condition, or behavior.

ENSURE THAT YOU TRAIN GENERAL CONTRACTORS ON THE WORKSITE-SPECIFIC EMERGENCY PROCEDURES AND EQUIPMENT. Knowledgeable employees and contractors can cooperate and make fast, quality decisions if they are prepared before an emergency occurs. The following topics and procedures at a minimum should be provided to employees and contractors:

- Fire prevention and evacuation plans.
- Emergency spill response and procedures.
- Exit routes and assembly areas for emergency evacuations.
- The location of emergency equipment such as fire extinguishers, first aid kits, and rescue equipment.
- Emergency contacts and communication methods.
- Rescue and medical duties for those employees who are to perform them.

Establishing clear expectations, communication, training, and monitoring all help employers and contractors work together to complete their jobs safely while also protecting the safety and health of all affected employees.

In today's economy, an increasing number of workers are assigned by staffing agencies to work at specific ***HOST*** **WORKSITES** under the direction and control of the **HOST EMPLOYER**. Examples include seasonal workers, such as delivery drivers and warehouse workers, who may be placed in both short- and long-term assignments. In these situations, it is important for the staffing agency and the host employer to communicate and coordinate to provide and maintain a safe work environment for their workers.

In other situations, some workers are employed by a **host employer** and others by a contractor or subcontractor. Examples include electrical or mechanical contractors working in a facility, a vendor installing or maintaining equipment, or long-term contractors providing building cleaning and maintenance. OSHA refers to these as "multiemployer" worksites. In these

circumstances, it is important that each employer and contractor consider how its work and safety activities can affect the safety of other employers and workers at the site.

In both temporary worker and multiemployer situations, safety is enhanced if employers establish mechanisms to coordinate their efforts and communicate effectively to afford all workers equal protection against hazards. These mechanisms include measures to ensure that all workers on site (and their representatives) can participate in preventing injuries and illnesses. Failure to take these steps may undermine safety programs. For example, if the different employers have inconsistent policies for when and where to wear personal protective equipment, workers may mistakenly believe that the equipment is not needed, leading to injury. Inconsistent safety policies may also cause workers to question the credibility of safety and health programs, resulting in less meaningful employee engagement and participation.

EFFECTIVE COMMUNICATION AND COORDINATION AMONG SUCH EMPLOYERS MEANS THAT, BEFORE COMING ON SITE, CONTRACTORS AND STAFFING AGENCIES AND THEIR WORKERS ARE AWARE OF:

- The types of hazards that may be present.
- The procedures or measures they need to use to avoid or control their exposure to these hazards.
- How to contact the host employer to report an injury, illness, or incident or if they have a safety concern.

IT ALSO MEANS THAT HOST EMPLOYERS AND THEIR WORKERS ARE AWARE OF:

- The types of hazards that may arise from the work being done on site by workers employed by contractors or staffing agencies.
- The procedures or measures needed to avoid or control exposure to these hazards.
- How to contact the contract or staffing firm if they have a safety concern.
- What to do in case of an emergency.

BUSINESS / REGULATION

Under the Occupational Safety and Health Act of 1970, employers are responsible for providing safe and healthful workplaces for their employees.

The federal act requires that employees involved in residential construction activities 6 feet or more above lower levels must be protected by a guardrail, safety net or personal fall arrest system, such as a body harness.

A Florida construction company was issued willful citations alleging failure to provide cave-in protection to employees working inside an excavation that contained unstable soil, and allowing excess soil to be placed too close to the edge of a trench wall. The company was also issued serious citations alleging failure to adequately train employees, exposing workers to hazards from ductile iron pipe being lifted overhead and allowing employees to use a ladder of insufficient length on an unstable surface. Proposed penalties total $155,000.

1. All contract employees performing work for PPG must adhere in detail to the **Safety, Health and Security rules**. The contractor will remove and replace any contract employee who fails to comply with these rules. All interpretations will be made by the designated representative for PPG INDUSTRIES.
2. PPG INDUSTRIES' General Terms and Conditions shall apply to all contractor work.
3. General
    1. The contractor and his employees shall comply with all federal, state and local safety regulations.
    2. The use of or the possession of alcoholic beverages or nonprescription drugs is not permitted on PPG premises.
    3. All unusual incidents should be reported immediately to the PPG representative, (accidents, damage to property, etc.)
    4. A 24-hour phone number will be left with the PPG representative while the contractor has workers or material on PPG Premises. Likewise, a 24-hour PPG number will be supplied to the contractor

representative.

5. Before starting any excavations, the contractor must consult with the PPG representative for all known underground utilities or other pipe lines or tanks.
6. All hazardous openings or excavations must be barricaded at all time sunless the work requires their temporary removal. The area will be lighted one hour before sunset till one hour after sunrise.
7. While overhead work is being performed, signs must be posted in a conspicuous manner “Danger – Work Overhead”. If sparks from cutting, etc., or other materials are falling, the area below must be roped off completely.
8. Work shall not be performed under or immediately adjacent to loads being hoisted and all loose items of equipment or material shall be secured from falling.
9. No riders are permitted on moving equipment, rigging or loads.
10. Guylines must be clearly marked where they cross the travel space of paths, walkways or roadways. K. Fire doors must not be blocked or fastened open. Wires, cables or hoses, etc. shall not pass through a doorway and prevent the fire door from closing completely.
11. Acetylene, oxygen, nitrogen and other compressed gas cylinders must be securely fastened in an upright position.
12. Jumping from docks, trucks or other platforms is prohibited.
13. Do not use packages, drums or other items in place of ladders.
14. Do not run.
15. The contractor shall report any malfunction or potential safety hazard to the PPG representative.
16. The contractor is responsible for noting the clearance under pipe racks, conduit racks, doors, ramps and other such overhead obstructions and reconciling any possible interference with equipment.
17. The contractor shall observe the facility speed limits

when moving any type of vehicle.

18. Contractor personnel shall not connect to, adjust or otherwise tamper with PPG equipment.
19. The possession of any type of weapon on PPG property is prohibited.
20. Under no circumstances should a contractor employee enter a tank or confined space without first having obtained a Confined Space Entry permit. This permit is available through the PPG representative.

STATISTICS

According to the most recent OSHA statistics available, 5,250 workers died on the job in 2018, or more than 100 a week. Out of 4,779 worker fatalities in private industry, 1,008 – or more than 21% – happened in construction. The leading cause of death, excluding highway collisions, in construction? Falls.

Criminal prosecutions are rare under the law that established OSHA, but they have been on the rise in recent years, along with the number of fines levied, due to changes made during the Obama administration.

According to the latest "Death on the Job" report by the AFL-CIO released in April 2019, only 99 worker death cases had been prosecuted criminally under the federal act since its passage. The report found that OSHA resources still are lacking and penalties are still too weak, with "much work remaining to be done."

According to a report from ISN Analytics, the use of contractors and the outsourcing of work continue to grow. About 42% of organizations plan to increase their outsourcing.

Almost half of the surveyed contractor hiring organizations reported that between 40% and 100% of their on-site work is completed by contractors, and 23% of organizations use over 1,000 contractor companies. In 55% of organizations, the EHS department owns the contractor management process.

These figures highlight the growing need to improve contractor safety management in order to better safeguard the safety of a

workforce, employee and contractor alike. The safety performance of contractors and subcontractors has a great impact on the safety performance of hiring organizations.

World-Class Organizations Assess Contractor Safety Statistics

Since contractors have a great impact on the safety of workforces and the safety performance of hiring organizations, companies can't afford to select the wrong ones. To mitigate the risk, you can use a contractor prequalification service, or implement a contractor management system in your own organization.

One way to make sure that the right contractors are selected is to evaluate them on their safety statistics. According to research by the National Safety Council's Campbell Institute on best practices in contractor management, all 14 world-class organizations in EHS included in the study assess contractors on their safety statistics, including:

- Experience Modification Rate (EMR)
- Total Recordable Incident Rate (TRIR)
- Fatality Rate
- Days Away, Restricted or Transferred (DART) rate
- Other OSHA recordables

All firms included in the research require contractors to submit these statistics for a given time period, typically the last three years.

RECOMMENDATIONS

It is recommended that the following procedures be implemented to ensure the safety and health of all parties. **Action item 1: Establish effective communication**

Each **host employer** establishes and implements a procedure to ensure the exchange of information about hazards present on site and the hazard control measures in place. Thus, all workers on the site are aware of worksite hazards, and the methods and procedures

needed to control exposures to them.

How to accomplish it

- The **host employer** communicates with contractors and staffing agencies to determine which among them will implement and maintain the various parts of the safety and health program, to ensure protection of all on-site workers before work begins. These determinations can be included in contract documents that define the relationships between the parties.
- The **host employer** establishes and implements procedures to exchange information with contractors and staffing agencies about hazards present in the workplace and the measures that have been implemented to prevent or control such hazards.
- The **host employer** gathers and disseminates information sufficient to enable each employer to assess hazards encountered by its workers and to avoid creating hazards that affect workers on the site.
- **Contractors and staffing agencies regularly give the host employer** any information about injuries, illnesses, hazards, or concerns reported by their workers and the results of any tracking or trend analysis they perform.
- Each **contractor** establishes and implements a procedure for providing the **host employer** with information about the hazards and control measures associated with the work being done by its workers and the procedures it will use to protect workers on the site.
- The **host employer** gives contract employers and staffing agencies the right to conduct site visits and inspections and to access injury and illness records and other safety and health information.
- The **host employer** communicates with **contractors** and staffing agencies and their workers about nonroutine and emergency hazards and emergency procedures.
- Information is communicated before on-site work starts and, as needed, if conditions change.

Action item 2: Establish effective coordination

Host employers, contractors, and staffing agencies coordinate on

work planning, scheduling, and resolving program differences to identify and work out any concerns or conflicts that could impact safety or health.

How to accomplish it

Host employers:

- Include in contracts and bid documents any safety-related specifications and qualifications and ensure that contractors and staffing agencies selected for the work meet those requirements.
- Identify issues that may arise during on-site work and include procedures to be used by the host employer and contractors and/or staffing agencies for resolving any conflicts before work starts.

Host employers coordinate with contractors and staffing agencies to:

- Ensure that work is planned and scheduled to minimize impacts on safety.
- Ensure that staffing agency workers are adequately trained and equipped before arriving on the worksite.
- Harmonize their safety and health policies and procedures to resolve important differences, so that all workers at the site have the same protection and receive consistent safety information.

Host employers and staffing agencies:

- Work together to deal with unexpected staffing needs by ensuring that enough trained and equipped workers are available or that adequate lead time is provided to train and equip workers.
- Make sure that managers with decision-making authority are available and prepared to deal with day-to-day coordination issues.

PREVENTION

Contractors fill one of every five jobs in the United States and

are expected to make up nearly half our workforce within the next decade. They bring with them varying degrees of occupational health and safety knowledge, training and experience, making it difficult for organizations to manage workplace safety.

To mitigate the risks associated with disparate, and potentially inadequate safety training of contractors who work on their behalf, more than 75% of companies in a recent NAEM safety management benchmarking discussion plan to advance their contractor safety programs. It's for good reason: Preliminary OSHA reports show that organizations across industries and trades continue to fall short when addressing critical safety hazards, including the use of personal protective equipment, operation of machinery and industrial trucks, and fall protection, among other hazards.

A strong contractor safety program—one that prequalifies contractors before they are hired and monitors and manages ongoing safety performance—can ensure that contractors are adequately equipped to mitigate hazards. This can help to prevent worker injuries, protect corporate reputation, support compliance with government regulations, and avoid hefty fines associated with violations.

Business drivers for creating a more strategic contractor safety management program include the following:

- Rising safety incident or injury rates.
- Regulatory requirements.
- Benchmarking best practices.
- Environmental, social and governance reporting/stakeholder expectations.
- Enterprise risk management.

Here are five best practices for mastering contractor safety management with dedicated, strategic programs that extend throughout your entire supply chain. Leveraging them can help you build a more comprehensive, effective program to better protect the people on your job sites and, in turn, your business.

1. **Ensure that safety and expectations are communicated through induction training.**

Safety training is one of the most impactful tools companies have for sharing their safety culture throughout their workforce, including their contracted workers. What better way to ensure your workforce's safety readiness than to train them before they set foot on a job site?

Onboarding or induction training communicates safety expectations and trains workers to safely perform job duties before they come to work. Typically instructor-led, the detailed training efficiently and effectively prepares contractors to safely operate machinery and understand how to mitigate the unique safety hazards of their jobs.

It often includes the company's safety and emergency procedures, work permits, and site requirements. Requiring contractors to complete induction training provides assurance that they are prepared with the most effective, relevant training for the jobs they are hired to do. Use of badging or other technology-based tools to enable easy verification of training completion before a contractor goes to work is key to ensuring compliance.

2. **Build safety requirements into contracts and accounts payable processes.**

Contracts help to clearly establish your organization's expectations regarding its contractors' safety preparedness and performance. Legal contract language should require their compliance with federal, state and local regulatory requirements, along with company-specific health and safety requirements. This may include participation in the company's safety prequalification program administered through a third-party provider and maintenance of an acceptable safety score in their contractor management system.

In addition, some organizations also tie meeting contractor safety requirements into their accounts payable processes to help motivate and enforce contractor compliance. For example, when contractors don't maintain their compliance, as evidenced by an

acceptable safety score in the contractor management system, payment is withheld until compliance is achieved.

3. **Establish and track contractor safety KPIs.**

Key performance indicators (KPIs)—such as total number of safety-related incidents and lost time rates—are one of the newest tools for advancing contractor safety.

EHS leaders rely heavily on safety metrics to create awareness of safety adherence and motivate workers to improve their performance. Many companies leverage a third-party software provider to host a digital dashboard that features the company's key safety-related KPIs for its contractors.

Clearly visible analysis of KPIs that represent safety adherence and progress can help decrease serious incident rates by holding department directors accountable for them. Regularly scheduled meetings to discuss performance metrics, including any incidents that occurred along with their root causes and corrective actions, can help teams strategize for continued improvement.

4. **Leverage audits and incorporate safety performance into post-project evaluations.**

Periodic on-site inspections, jobsite walk-throughs and annual audits are effective ways to monitor contractor safety performance. These can be conducted by internal resources or some organizations leverage an outside vendor to perform these audits, supplementing their internal resources to give them more eyes in the field.

Organizations with advanced contractor safety programs go beyond contractor prequalification and monitoring by integrating safety performance into post-project evaluations and close-out conversations. The company relies on the same general contractors for various projects, so they can regularly evaluate their performance and collaborate with them on subcontractor management to monitor and continually improve safety adherence.

The results of contractor safety audits and post-project

evaluations can also be shared with supply chain, providing that part of the organization with additional metrics to monitor contractor performance, manage the relationship, and make decisions regarding inclusion in future bid invitations.

5. **Leverage technology and third-party vendor support.**

Gathering, verifying and auditing contractors' health and safety metrics and safety programs are not quick or easy tasks. According to EHS Today's 2019 National Safety Survey, leveraging technology for assistance is one of the most prominent industry trends. Technology, such as contractor management software solutions, modernizes contractor safety management for more efficient, effective results.

Survey respondents with advanced programs rely on third-party providers with technology solutions that are backed by safety expertise to bring added capacity. A provider with expertise in contractor safety management can help standardize the prequalification process across the organization and provide clear visibility into whether a contractor company meets its safety expectations when assessing potential hires. This type of solution also frees up internal resources by handling time-consuming collection and review of safety program information from contractors and, at the individual worker-level, can provide a clear picture of contract workers' training and readiness to work, and to help flag workers in need of additional training.