



# Criminal Liability for Job Site Construction Accidents

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# **Criminal Liability for Job Site Construction Accidents**

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“To err is human; to forgive divine.” Alexander Pope, “An Essay on Criticism.”

As the number of high-profile construction accidents—both domestic and abroad—has grown and media coverage has intensified, the construction industry has trained its focus on not only the best practices for preventing accidents, but also the potential consequences when these incidents are more than accidents. For instance, the Construction Industry Safety (CISI) group and the Incident and Injury Free CEO (IIF) Forum promote jobsite safety via programs such as “Construction Safety Week.” Together these entities are comprised of 80 national and global construction firms, with a goal of promoting safety in the construction industry.

Concern for safety is apparent on construction projects throughout the country and world, as evidenced by daily/weekly construction briefings and the familiar “\_\_\_Days Since a Lost Work Accident” signs. Those that work in the Construction Industry know firsthand these dangers and want to see their co-workers go home safely to their families after a long day. From a more selfish perspective, time is money in this business and safe

projects are more likely to be profitable projects due to lack of delays and prevention of claims for jobsite injuries. For employers, criminal liability for job site construction accidents is more and more a concern. Mainstream headlines highlight several cases where construction accidents = criminal charges.

From the well-publicized October 21, 2016 drowning of two construction workers in Boston after a trench in which they were working collapsed, to the March 18, 2018 pedestrian bridge collapse at Florida International University (“FIU”) which killed 6 and injured 9 more, construction accidents that result in loss of life are commonly viewed as more than “accidents.” There appears to be a trend toward investigations of construction incidents by various agencies for criminal liability. Inevitably, accidents happen in every area of life, from “fender bender” automobile accidents to high profile construction accidents, which result in extensive property damage and, unfortunately at times, loss of life. When, though, is an accident something more?

#### I. Overview of Job Site Construction Accidents Implicating Criminal Investigations

With regard to the Boston trench collapse, the Suffolk County District Attorney’s office presented evidence of manslaughter against the employer—both as a corporate entity and the company’s owner—related to the accident. There, the deceased were killed when underground materials supporting a hydrant in an allegedly unshored hole they were digging gave

way and the hydrant burst, flooding the trench. Prosecutors claim the employer was pushing the men to work faster because the project was behind schedule. Motions to Dismiss manslaughter charges were considered and denied, leaving the employer and its owner subject to criminal prosecution. In an industry where liquidated damages and other pressures lead to acceleration, this is a headline of note.

In a similar case, the owner of Seattle-area construction company was charged in early 2018 with felony manslaughter following an investigation of the death of an employee after a 2016 trench collapse. There, the King County, Washington, Prosecuting Attorney's office filed second-degree manslaughter charges against the owner in connection with the death of the employee, who was killed when the dirt walls of the trench he was working in collapsed and buried him on a job site in West Seattle.

The company had dug trenches next to a Seattle home to replace a sewer line. The trench where the worker died was seven-feet deep and just under two-feet wide. There was no system in place to prevent all sides from caving in. Excavation and trenching were known to be very hazardous in the West Seattle area, so there were numerous safety requirements that should have been followed, including ensuring that sites four-feet deep or more have protective systems in place to prevent the dirt sides from caving in. Among other requirements, employers also must make sure there are ladders, ramps or other ways available to safely exit an excavated trench.

Additionally, there must be daily inspections of excavations to monitor changing soil conditions. Alki violated these and other workplace safety requirements, according to the state Department of Labor & Industries (L&I).

After an L&I investigation of the death, the state cited and fined the company in 2016 for multiple workplace safety violations, including “willful” violations – the most severe. The fines totaled \$51,500. After charges were filed in 2018, L&I Director Joel Sacks was quoted as saying “there are times when a monetary penalty isn't enough,” and “this company knew what the safety risks and requirements were, and ignored them. The felony charges show that employers can be held criminally accountable when the tragedy of a preventable workplace death or injury occurs.”

Mr. Sacks also added that “When workplace safety and health laws are followed on the job, nearly every incident like this can be prevented. When they're ignored, the results are often disastrous and irreversible.” All involved in the construction process should take this quote to heart.

In Florida, we still await all the facts on the FIU bridge collapse and a decision by the Dade County State Attorney’s office on possible criminal action. However, a charge of “Culpable Negligence” could be in play. In Florida, the crime of Culpable Negligence is defined as a course of conduct “showing reckless disregard for human life, or for the safety of persons exposed to its dangerous effects, or . . . which shows



wantonness or recklessness . . . [or] an indifference to the rights of others as is equivalent to an intentional violation of such rights.”

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