

Loss Prevention

COMPETENT PERSON DESIGNATION

Gramercy Risk Management (Gramercy) uses ESIS Health, Safety and Environmental to perform construction site visits in the New York Metropolitan area. When necessary, ESIS consultants will generate recommendations to improve safety and assist the insured comply with regulations governing construction operations. The most common recommendation generated for Gramercy insureds in the NYCON program is the failure to declare a Competent Person. In New York City, the requirement for a competent person supersedes requirements published by OSHA. What are the consequences? Failure to comply can result in a fine of \$5,000-\$25,000.

In this article, ESIS consultants explain the regulation, the designation and role of a competent person. Information to implement this requirement is included.

Role of the Competent Person

To limit the potential exposure to occupational injuries and illnesses, a Competent Person must be designated to act on behalf of the employer. This Person must have the capacity to anticipate, protect, and in several instances train employees. So, the employer must determine the ability of such individuals. This is what written OSHA and NYC DOB regulations mandate. The purpose of this article is to provide the employer a path to understand why the employer must **designate** the Competent Person(s) according by the selected employee's ability to identify hazards, by the experience that selected employee has at the task in hand, and, by industry required training that the selected employee must have. These are pre-requisites that the selected employee meets to take prompt corrective action(s) to eliminate injury potential. This means that the employer designates the selected employee, based on this pre-established criterion, the Authority to act on the employer's behalf. So, Hazard Recognition Ability AND Authority must be documented by such employer. This is the Law!

Framework

The term "Competent Person" is used in the OSH Act (Act, means "Law"). The term is also used in several Federal, State, Local, Proprietary and Private standards and guidelines. Yet, the absence of Competent Persons (and the omission of documenting the Designation Form) is among the most frequently cited violations by OSHA and the NYC Department of Buildings. The later could impose fines for not having a Competent Person Designation or a Competent Person Designation Form ranging from \$5,000 to \$25,000, depending on the frequency and severity of the infraction – Yes, not observing the Law negatively impacts projects, in all industries where Competent Persons are needed, like the Construction Industry. Not observing the Law could also have other unfortunate results, such as the loss of life, occupational injuries, ill health or damages to the

environment. In many cases, these negative impacts are preventable by the designated Competent Person. OSHA and the DOB provide these definitions:

<p><u>United States Department of Labor's Occupational Safety and Health Act (OSHA)</u> The OSHA definition of a Competent Person is:</p> <p>"One who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has the authorization to take prompt corrective measures to eliminate them" [29 CFR 1926.32(f)].</p>	<p><u>NYC Department of Buildings Definition of Competent Person</u> mandates that:</p> <p>"The construction superintendent must designate a competent person for each job site for which the construction superintendent is responsible and ensure such competent person is present at the designated job site at all times active work occurs. [...] The competent person must carry out orders issued by the construction superintendent; be able to identify unsanitary, hazardous or dangerous conditions; take prompt corrective measures to eliminate such conditions; immediately report to the construction superintendent accidents at the job site or any damage to adjoining property caused by construction or demolition activity at the job site, and be able to effectively communicate workplace instructions and safety directions to all workers at the site." [NYC Building Code 3301.13.12].</p>
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The omission of a Competent Person on-site, of course, results in an increased number of accidents (and in some cases fatalities), as it was mentioned -in the preceding page. These accidents/fatalities are preventable by the effectiveness of the actions taken by the employer and the Competent Person.

<p>So, What is a Competent Person? A Competent Person is typically the crew foreperson, or a supervisor overseeing the actual construction processes.</p>	<p>What is NOT a Competent Person? A Competent Person is not expected to take part in the engineering design.</p>
<p>The Competent Person has great discretion to act on the employer's behalf, and This Person is designated in written form by such employer.</p>	<p>This Person has No legal obligation or responsibility, such as the Superintendent or the Site Safety Manager.</p>

Why it is necessary to designate a Competent Person?

To protect employees (which is the OSHA requirement) and to safeguard the public and adjoining property (which is the DOB requirement), the practical application of how employers can designate Competent Persons is performance-based.

1. The Competent Person Designation Form Sample, Appendix A: **Competent Person Designation Form** eliminates confusion and ambiguity created by the flexibility in performance-based mandates. The procedure included in the attachment helps employers, managers, and employees to familiarize themselves with the clear step-by-step written process to include credentials, and how to define ability and authority that a Competent Person must possess to meet the OSHA or NYC DOB requirement.

2. Some standards add additional specific requirements that must be met by the competent person. Though the actual responsibilities of a Competent Person vary and are outlined in Appendix B: "**Competent Person Standards-Construction.**" To access the Appendixes, click [here](#).

In Summary: By way of Training and experience, a Competent Person is knowledgeable of applicable standards, is capable of identifying workplace hazards relating to the specific operation, and, by the designation of the employer, This Person has the authority to correct hazard potential.