



Joint Safety Committee
Oregon Pacific-Cascade Chapter, NECA
IBEW Local 932
Wednesday January 26, 2022
Meeting Minutes

Rollcall: meeting called to order (Sign in Sheet)- [VIA Zoom](#)
Approval of prior month Minutes

Communications

Year-End-Review- OSHA 300 logs, Injury review
OSHA Reporting and Recordkeeping checklist
Supreme Court Decision- ETS discussion
Reminder to report all injuries to Committee office

New Business: Monthly Safety Training and Information Packets (distributed)

Confined Space hazards-review program
Storm Restoration- reminders for 'inside' wiremen
Reducing slips, trips and falls
Lone worker safety
Written safety plans- review internal documents
"You Can't Go Home Again"- Thomas Wolf

Injury Review

January

280- Fall, Knocked from ladder by hosting equipment, sprained ankle, LT

Next Meeting – March 16, 2022

Adjourned

March 16, 2022

Elias Campbell- GEW
Senior Safety Consultant



Joint Safety Committee
Oregon Pacific-Cascade Chapter, NECA
IBEW Local 932

Wednesday April 6, 2022

Meeting AGENDA

Roll call: meeting called to order (In-Person and Virtual) Approval of Meeting Minutes

1.0 Communications

- 1.1 Mask mandate- ended Friday 3/11/22, other requirements till 6.15.22
- 1.2 'Unlawful Harassment' program roll-out
- 1.3 Training Record review- Forklift (3-years)

2.0 New Business: Monthly Safety Training and Information Packets (distributed)

- 2.1 Safety Packet Review
- 2.2 EC Magazine
 - 2.2.1 National EV Charging Network
 - 2.2.2 Trenching
 - 2.2.3 OSHA 2022- new standards and more stringent Recordkeeping
- 2.3 Safety & Health Magazine
 - 2.3.1 PLHCP- Workmen's Comp
 - 2.3.2 Women in the workplace- PPE, Culture
 - 2.3.3 First Responders- struck-by incidents (website)
- 2.4 EHS Today
 - 2.4.1 Lone workers- safety and support

3.0 OSHA Injury/Incidents

- 3.1 January
 - 3.1.1 280 1.26- Fall, ladder placement/use, Lost Time
- February
 - 3.1.2 659 2.16- Struck-by, debris in eye, Recordable

4.0 Class Schedule

- 4.1 Posted online

IMPORTANT REMINDER: *The variance granted to NECA/IBEW by OR-OSHA requires participation. For the Committee to be viable and provide assistance to Contractors and IBEW Members we need to have consistent attendance of all committee members.*

Work related accidents and incidents should be reported via the Accident/ Incident report to the NECA office for consideration by the committee.

Next Meeting: May 2022 'Safety Break Oregon' site visits



Safety Meeting Packet

May 2022

2022 LABOR HOURS RECAP

Local#	Contract Type	Annual Total	Average Hrs/Mo	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
280	Inside	120,071	1	120,071	120,071										
280	Inside Appr.	32,600	1	32,600	32,600										
280	MAI	0	1	0	0										
280	Material	11,541	1	11,541	11,541										
280	Residential	5,937	1	5,937	5,937										
280	Resi. Appr.	4,361	1	4,361	4,361										
280	S & C	13,122	1	13,122	13,122										
280	S & C Appr.	5,438	1	5,438	5,438										
280	Support Tech/MOU	8,163	1	8,163	8,163										
TOTAL 280		201,233	9	201,233	201,233	0									
Total NECA				172,464	0										
% NECA				85.70%	#DIV/0!										

Local#	Contract Type	Annual Total	Average Hrs/Mo	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
659	Inside	17,421	1	17,421	17,421										
659	Inside Appr.	8,904	1	8,904	8,904										
659	Material	536	1	536	536										
659	Residential	633	1	633	633										
659	Resi. Appr.	359	1	359	359										
659	S & C	581	1	581	581										
659	S & C Appr.	177	1	177	177										
Total 659		28,611	7	28,611	28,611	0									
Total NECA				19,494	0										
% NECA				68%	#DIV/0!										

Local#	Contract Type	Annual Total	Average Hrs/Mo	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
932	Inside	6,804	1	6,804	6,804										
932	Inside Appr.	3,041	1	3,041	3,041										
932	Residential	14	1	14	14										
932	Resi. Appr.	115	1	115	115										
932	S & C	497	1	497	497										
932	S & C Appr.	0	1	0	0										
Total 932		10,471	6	10,471	10,471	0									
Total NECA				8,823	0										
% NECA				84%	#DIV/0!										

Grand Total	240,315	1	240,315	240,315	0										
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Total NECA	200,781	1	200,781	200,781	0										
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% NECA	84%		84%	84%	#DIV/0!										
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**2022 LABOR HOURS RECAP
NECA MEMBERS**

Local#	Contract Type	Annual Total		Average Hrs/Mo	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
280	Inside	102,841	1	102,841	102,841											
280	Inside Appr.	26,037	1	26,037	26,037											
280	MAI	0	1	0	0											
280	Material	10,795	1	10,795	10,795											
280	Residential	3,486	1	3,486	3,486											
280	Resi. Appr.	3,330	1	3,330	3,330											
280	S & C	12,395	1	12,395	12,395											
280	S & C Appr.	5,417	1	5,417	5,417											
280	Support Tech/MOU	8,163	1	8,163	8,163											
Total 280		172,464	9	172,464	172,464	0										

Local#	Contract Type	Annual Total		Average Hrs/Mo	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
659	Inside	12,116	1	12,116	12,116											
659	Inside Appr.	5,820	1	5,820	5,820											
659	Material	373	1	373	373											
659	Residential	279	1	279	279											
659	Resi. Appr.	148	1	148	148											
659	S & C	581	1	581	581											
659	S & C Appr.	177	1	177	177											
Total 659		19,494	7	19,494	19,494	0										

Local#	Contract Type	Annual Total		Average Hrs/Mo	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
932	Inside	5,629	1	5,629	5,629											
932	Inside Appr.	2,697	1	2,697	2,697											
932	MAI	0	1	0	0											
932	Residential	0	1	0	0											
932	Resi. Appr.	0	1	0	0											
932	S & C	497	1	497	497											
932	S & C Appr.	0	1	0	0											
Total 932		8,823	7	8,823	8,823	0										

Grand Total		200,781		200,781	200,781	0										
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**IBEW LABOR HOUR RECAP, LAST 5 YEARS
ALL SIGNATORIES**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2018	129,958	152,277	187,788	175,909	199,302	194,584	197,419	246,866	230,127	238,937	241,813	261,195	2,456,175
2019	235,064	267,789	302,365	274,692	291,848	269,365	243,405	312,956	299,388	305,249	332,724	289,681	3,424,525
2020	269,064	305,744	303,666	204,430	211,800	216,251	245,543	256,035	196,445	272,974	231,380	249,688	2,963,020
2021	189,192	214,593	235,405	265,649	259,752	251,572	286,491	276,130	250,956	304,417	249,043	310,748	3,093,948
2022	240,315	0	0	0	0	0	0	0	0	0	0	0	240,315
Grand Total	823,278	940,403	1,029,224	920,680	962,702	931,772	972,858	1,091,987	976,916	1,121,577	1,054,960	1,111,312	11,937,668

**IBEW LABOR HOUR RECAP, LAST 5 YEARS
NECA MEMBERS**

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
2018	100,801	121,674	149,612	140,924	160,511	152,229	156,427	200,133	190,473	197,958	202,072	222,483	1,995,297
2019	199,200	231,668	259,726	232,744	244,112	226,383	200,634	261,084	237,306	253,322	247,628	235,455	2,829,262
2020	224,793	255,228	246,899	167,739	169,124	172,186	203,008	209,747	162,195	231,451	191,467	211,496	2,445,333
2021	155,621	179,811	191,728	222,543	209,809	200,925	230,497	220,284	207,617	257,240	211,910	267,914	2,555,899
2022	200,781	0	0	0	0	0	0	0	0	0	0	0	200,781
Grand Total	680,415	788,381	847,965	763,950	783,556	751,723	790,566	891,248	797,591	939,971	853,077	937,348	9,825,791



Safety Training Topics

May 2022

Identifying Electrical Hazards in the Home

Understanding Arc Flash as a Hazard

Understanding Electrical Injuries

Accident Review: Electrocution

SAFETY TRAINING TOPIC

Identifying Electrical Hazards in the Home

Electrical hazards exist in the home and office in addition to a variety of different job sites. In fact, many electrical injuries and electrocutions occur away from work. Fortunately, there are some tips that you can follow, to help protect yourself from electric shock, electrocution and fires in the home or office setting.

Inspect electrical outlets for loose fitting plugs, as they can increase the likelihood of shock and electrical fires. If you observe missing or broken wall plates, replace them immediately and avoid overloading outlets with too many appliances. In the event that small children will be around unused outlets, you should make sure to use tamper resistant safety covers.

It is important to check cords of appliances as well as the plugs and connectors, to make sure they are not frayed, cracked or damaged, placed under rugs or carpets, resting on furniture or located in high traffic areas. Never nail or staple cords to walls, floors or any other objects.

If you need to use an extension cord for any purpose, it should only be done so on a temporary basis. If you are using extension cords, make sure that they have safety closures to protect young children from shocks or mouth burns. Never use an indoor extension cord for outdoors. Never use multiple extension cords.

You should check all electrical panels to make sure that all breakers and fuses are properly rated for the circuit that they are protecting. If you are not sure what the correct rating is, have a qualified electrician identify and label the correct size that needs to be used. When an appliance keeps blowing a fuse, trips a breaker or shocks you, immediately unplug, repair or replace it. When replacing a fuse, you must replace it with the same size as the fuse you're removing.

Additionally, inspect all light bulbs and appliances to ensure the wattage matches each fixture requirements. Never replace bulbs with those that have higher wattage than recommended. When changing a light bulb, make sure that it is screwed in properly to prevent overheating.

Check for ground fault circuit interrupters (GFCIs) on electrical outlets. A GFCI is an inexpensive electrical device that shuts off power instantly if there is a problem. If you do not have them, you should install them, especially in all "wet" areas of the home such as bathrooms, kitchens and basements. Test them monthly to ensure they are operating properly.

You may also consider adding arc-fault circuit interrupters (AFCIs) on bedroom circuits, carbon monoxide and smoke detectors. If you have additional questions or concerns consult with an electrician or local electrical inspector.

REVIEW AND DISCUSSION

- What can happen if you use an electrical appliance with a loose fitting plug?
- When is it acceptable to nail or staple appliance cords to walls or the floor?

SAFETY TRAINING TOPIC

Understanding Arc Flash as a Hazard

Arc flash occurs when a flashover of electric current leaves its intended path and travels through the air from one conductor to another, or to the ground. The results can be detrimental if you or a colleague is in close proximity to the arc flash. This hazard can cause serious injury or even be fatal. It is important to understand what causes arc flash and how to avoid it.

Arc flash can be caused by many things including dust, dropping tools, accidental touching, condensation, material failure, corrosion, and faulty installation. Three factors determine the severity of an arc flash injury:

- Proximity to the hazard
- Temperature
- Time for circuit to break

If you experience an arc flash injury, your quality of life may never be the same. It is important to understand how to avoid the hazard. An arc can result in burns, fires, flying objects, blast pressure, and a sound blast.

The National Fire Protection Association (NFPA) has developed shock and arc flash boundaries designed to protect you when working on or near energized equipment. These are:

- Limited Approach – distance from an exposed energized electrical conductor or circuit part within which a shock hazard exists. No unqualified workers are allowed inside this boundary.
- Restricted Approach - distance within which there is an increased risk of shock, due to electrical arc over combined with any inadvertent movement while working close to an energized electrical conductor or circuit part.
- Prohibited Approach (inner boundary) - a distance from an exposed part which is considered the same as making contact with the live part. This distance is not common between equipment. Some equipment will have a greater flash protection boundary while other equipment will have a lesser boundary.
- Arc Flash Boundary- distance within which an arc flash hazard exists and the incident energy level could cause severe damage and appropriate PPE is needed. At 1.2 cal/cm² second degree burns occur.

When determining what the appropriate boundary should be for a given hazard, you will need to assess the severity of the hazard. There are a variety of factors that will impact what the safe approach boundary will be. They include level of voltage, atmosphere and other activities being conducted in proximity to the hazard.

REVIEW AND DISCUSSION

- What are some things that can cause an arc flash from occurring?

SAFETY TRAINING TOPIC

Understanding Electrical Injuries

When working on or near electricity, a variety of electrical hazards are encountered on a daily basis. At some point you may encounter a colleague that becomes a victim of electric shock or an electrical burn. If this occurs, there are some reactionary measures that you should be familiar with to help respond to the situation.

First, it is imperative to understand that electrical injuries are very different than other types of injuries. Electric shock occurs when electricity flows through the body. When electricity flows through your body it has an impact on the normal electric impulses that occur in your nerves. It can damage your internal organs, heart rhythm, and even cause death.

Once electricity enters your body it generates heat, which can cause burns to internal organs. Electric arcs can also occur at the point of entry/exit, generating dangerous levels of heat that can result in severe burns to the skin.

If you observe a victim of an electrical injury, do not touch them while they are still in contact with the source of electricity. If you do, the electricity could enter your body and you both will become victims. If the source of the electricity can be shut off, do so immediately. If it cannot and there is suitable equipment on hand to protect against appropriate voltage, you can use it to free the victim.

Once the person is free from the electrical source, check to see if they are breathing and they have a pulse. If the victim is not breathing or does not have a pulse, you may need to begin cardiopulmonary resuscitation (CPR). Never perform artificial respiration on a victim that is breathing.

Additionally, you should look for the following symptoms for shocking sensations; numbness or tingling, change in vision, speech, or any unusual sensation, burns or open wounds, muscle spasms or contractions, sudden immobility or fractures, potentially deformed body parts, interrupted breathing, irregular heartbeats or chest pain, seizures, or unconsciousness.

In the event that any of these symptoms are evident, you should immediately call 911. Even if the contact was a low voltage source or there are no real symptoms of electric shock, you should still have the victim seek medical attention. Certain effects of the electricity are not always immediately apparent.

REVIEW AND DISCUSSION

- What should you never do if you observe a victim of an electrical injury still in contact with a source of electricity?
- When should you never attempt to perform CPR on a victim of an electrical injury?
- What type of symptoms should you look for to contact emergency following an electrical injury?

SAFETY TRAINING TOPIC

Accident Review: Electrocution

A steelworker was electrocuted when he contacted the energized case of a toaster oven. While taking a break from his normal work routine, the victim sat upon a wooden bench and rested his right forearm on a floor model air conditioner upon which the 120-volt toaster oven was setting. The victim's right arm contacted the energized casing of the toaster oven while his right calf contacted the grounded air-conditioning unit.

The victim received an electrical shock and went into cardiac arrest. The victim was treated by the local emergency medical service and transported to the local hospital where he was pronounced dead on arrival.

The company had a written safety policy and a comprehensive safety program. On-the-job and classroom training was provided to all employees, as well as training videos and safety manuals on electrical hazards. Additionally, weekly safety contacts were made and documented.

Following the incident investigators concluded that, in order to prevent future occurrences, employers should:

- Employers should periodically inspect all areas of their facilities, especially non-production areas, lunch rooms, break rooms, rest rooms, etc., to identify non-polarized plugs, improper grounding, and any other electrical hazards that may be present, and then apply appropriate measures to eliminate the hazard.
- Employers should require that all appliances brought into their facility be tested for electrical integrity by a qualified person before they are used. Employers should not only require such testing, but also ensure that all supervisors and workers are aware of the testing policy. [Note: The employer in this incident has adopted such a policy.]
- Employers should periodically re-evaluate safety programs and reinforce training related to worker recognition, avoidance, and reporting of hazards. A subsequent interview of the witnesses revealed that the victim and his co-workers were aware that a problem existed with the oven. On a number of occasions the workers, including the victim, had received electrical shocks from the oven.
- Employers should provide CPR training to all workers, both management and labor. Employers should ensure that all workers are provided with CPR training to support circulation and ventilation until trained medical personnel arrive.

REVIEW AND DISCUSSION

- What types of hazardous conditions might you look for to prevent a similar incident?

Safety

COMPLIANCE ALERT™

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March 1, 2022

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Is there a 'reasonable accommodation' for medical pot?

■ Court allows user to pursue discrimination suit

Whether an accommodation for a medical marijuana user is reasonable is a factual determination that should be decided on a case-by-case basis rather than a conclusion based on marijuana being illegal under federal law, the Supreme Court of New Hampshire said in a Jan. 14 decision.

The court reversed a lower court decision dismissing a lawsuit accusing an employer of firing a worker for requesting a reasonable accommodation for medical marijuana.

The former employee was suffering from Post-Traumatic Stress Disorder

(PTSD) and his doctor recommended he use marijuana to treat the issue.

No intent to use/possess at work

He then enrolled in the state's medical marijuana program and submitted a written request for an exception from his employer's drug testing policy as a reasonable accommodation for his disability.

In the written request, the employee said he had no intention of using or possessing marijuana during work hours or on the company's premises.

His employer denied the request and later terminated him, according to

(Please see Accommodation ... on Page 2)

INVESTIGATION

Fatality shows need to address situational awareness

A recent fatal incident investigated by the National Transportation Safety Board illustrates the need to help workers focus on situational awareness.

On October 14, 2020, a Housatonic Railroad Company employee working as the roadway worker-in-charge (RWIC) of a group of track workers was struck and killed by a rail-mounted track excavator traveling on an out-of-service track in North Canaan, CT.

The RWIC was standing clear of the track when the track excavator operator moved the machine near the RWIC's location to discuss the measurement. After they talked, the operator moved the excavator forward.

Unknown to the operator, as he moved the machine forward, the RWIC began rolling up his measuring

tape while continuing to walk along the track, placing himself between a nearby switch panel and the excavator.

The clearance between the panel and the excavator gradually reduced to about 2 feet as the machine continued to move forward.

Eventually, the excavator's large rubber tire struck and killed the RWIC.

There was no evidence of fatigue or drug use by either worker, and co-workers described both men as being alert and attentive the day of the incident.

Company revises training program

In addressing the incident, the company has since revised its training for RWICs to bring emphasis on being more situationally aware of close clearances when in the field.

CRIMINAL CHARGES

INSURANCE FRAUD

Owners charged in \$1.7M comp scheme

The owners of a California-based chicken processing plant are in hot water after being accused of orchestrating a \$1.7 million workers' compensation fraud scheme.

Wei Wen Wu and Feng Wen Lam, the husband and wife ownership team of Golden Food Inc., are charged with 43 felony counts of insurance fraud, grand theft and conspiracy after allegedly underreporting almost \$4.5 million in payroll.

The couple are scheduled to appear in court on March 29.

Fake tax docs found on computer

An investigation began after the department received a referral from the state's Compensation Insurance Fund (State Fund).

State Fund suspected the couple of fraud after comparing the payroll reported during annual audits with payroll reported to the Employment Development Department.

Investigators obtained search

warrants for Golden Food's true records and found fake tax reporting forms on the company's computer.

The records revealed that between 2015 and 2021, the company underreported its payroll to workers' compensation insurance carriers by \$4,489,390, resulting in a loss of \$1,681,138 in unpaid premiums to four insurance companies.

Accommodation ...

(continued from Page 1)

Jennifer Mora of law firm Seyfarth Shaw.

The employee filed a discrimination suit against his employer for failing to make a reasonable accommodation for his disability, and the employer asked for the case to be dismissed because marijuana is illegal under federal law.

A trial court agreed with the employer and dismissed the case.

State law doesn't exclude it

The employee argued on appeal that the trial court erred in its decision, which implies "an employer cannot be required to accommodate an employee's use of medical marijuana to treat a disability under state law."

Focusing on the text of the state's medical marijuana law, the Supreme Court agreed with the employee that the statute doesn't contain language excluding the use of medical marijuana as an accommodation.

The court said the status of an accommodation for medical marijuana as reasonable is something decided by the facts of each individual case, so it reversed the lower court decision.

Keep in mind that while technically this case applies only in New Hampshire, the state "joins a growing number of other jurisdictions that have found an employer might have to consider medical marijuana use as a reasonable accommodation," according to Seyfarth Shaw.

Arizona, Delaware, New Jersey, New York and Rhode Island are among those with similar protections.

SHARPEN YOUR JUDGMENT

This feature provides a framework for decision making that helps keep you and your company out of trouble. It describes a recent legal conflict and lets you judge the outcome.

INSPECTION MISHANDLED: DO VIOLATIONS STILL STAND?

"Hey, Pete!" company attorney John Jenkins called out.

Safety Manager Pete Travers was halfway down the dock and couldn't hear over forklift backup alarms and idling trucks – the warehouse crew was loading construction materials for a big project.

Pete looked up in time to see John gingerly making his way closer.

The attorney jumped every time a horn was sounded.

"We really need to get you out of the office more," said Pete.

So upset he forgot his PPE

"We have an OSHA citation," John said. "Something about a roofing crew caught without fall PPE?"

"The supervisor of that crew told me an inspector showed up when he saw our employees on a roof without their fall safety equipment on," said Pete.

"Apparently, the supervisor was running late, and when he arrived he also saw they weren't wearing their gear," Pete explained.

"He climbed a ladder to reprimand them," said Pete. "But he was so upset that he forgot to put his fall PPE on first."

"That's when OSHA arrived and started asking them to take pictures and measurements," Pete explained.

"Whoa, hold on a second," John said. "The inspector made them do it? That's against OSHA's own guidelines. Further, this is also a clear case of unavoidable employee misconduct. We can fight this."

Pete's company fought the citation. Did it win?

■ *Make your decision, then please turn to Page 6 for the ruling.*

Safety COMPLIANCE ALERT

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WHAT'S COMING

TRANSPORTATION

Feds roll out new traffic safety strategy

■ U.S. DOT PLANS NEW APPROACH TO COMBAT RISE IN ROADWAY DEATHS

Safety pros in the transportation industry take note – the U.S. Department of Transportation (DOT) announced a National Roadway Safety Strategy (NRSS) to combat the rise in traffic fatalities.

The NRSS will use a Safe System Approach – a method that builds and reinforces multiple layers of protection – to both prevent crashes and minimize harm if a crash does occur.

This approach acknowledges human mistakes and vulnerability, and “designs a redundant system to protect everyone by preventing crashes and ensuring that if they do occur they do not result in serious injury or death,” the DOT states.

Goal = zero roadway fatalities

Transportation incidents remained the most frequent type of fatal workplace incident, even through the pandemic, with 1,778 fatalities accounting for 37.3% of all workplace fatalities in 2020, according to Bureau of Labor Statistics data.

To address the rise in fatal crashes, the NRSS will use a five-pronged model to address safety by making safer people, roads, vehicles and speeds, and through post-crash care.

This effort is being funded by the bipartisan infrastructure law with the NRSS being considered “the first step in working toward an ambitious long-term goal of reaching zero roadway fatalities.”

- The NRSS will see the DOT:
- working with states to build safer roadways through updates to the Manual on Uniform Traffic Control Devices, a Complete Streets Initiative to provide technical assistance to communities of all sizes, and speed limit setting
 - leveraging technology to improve the safety of motor vehicles, including rulemaking on automatic emergency braking, and
 - investing in road safety through a new \$6 billion Safe Streets and Roads for All program, hundreds of millions for behavioral research and interventions, and \$4 billion in additional funding for the Highway Safety Improvement Program.

CRIMINAL CHARGES

Owners to serve prison time for fatal explosion

The owners of Nebraska Railcar Cleaning Services (NRCS) were sentenced Jan. 14 for willful violations of federal safety standards resulting in an explosion that killed two workers.

Steven Braithwaite, president and owner of NRCS, will serve 30 months in prison for his role in the offenses, and Adam Braithwaite, the company's vice president and co-owner, will serve one year and one day.

Each will pay \$100,000 in restitution, and NRCS and both Braithwaites must serve five years of probation and a \$21,000 fine.

The Braithwaites and NRCS pleaded guilty July 12, 2021, to:

- willful violations of federal worker safety standards that resulted in

two worker deaths

- violations of the Resource Conservation and Recovery Act (RCRA) involving hazardous waste
- endangerment to others
- submission of false documents to OSHA, and
- perjury.

Lied to OSHA about testing

The Braithwaites and NRCS failed to implement worker safety standards, mishandled hazardous wastes violating the RCRA and knowingly submitted false documents to OSHA during inspections as a cover up.

“Those decisions led to the deaths of two of their workers,” a Justice Department news release states.

TRENDS TO WATCH

Watch what's happening in various states. Some actions indicate trends.

■ NEW MEDICAL CANNABIS ACT NOW IN EFFECT

The **Mississippi Medical Cannabis Act** was signed into law Feb. 2, permitting the use of medical cannabis to treat debilitating conditions such as Parkinson's disease, muscular dystrophy and post-traumatic stress disorder.

This law was effective immediately upon Governor Tate Reeves' signing, but medical marijuana won't become available in the state for several months.

According to Kathryn Russo of law firm Jackson Lewis, employers:

- aren't required to permit or accommodate the medical use of cannabis
- aren't prohibited from taking adverse employment action against an individual as a result of their medical use of cannabis, regardless of their impairment or lack of impairment from the medical use of cannabis
- aren't prohibited from establishing or enforcing a drug testing policy, and
- may discipline employees who use medical cannabis in the workplace or who work while under the influence of medical cannabis.

■ COVID PRESUMPTION EXTENDED TO 2023

Minnesota's COVID-19 presumption for frontline workers was extended through Jan. 13, 2023.

The law states that a COVID-19 infection is work-related unless an employer is able to prove the infection happened elsewhere.

The law reinstates presumptive eligibility for doctors, nurses, firefighters, paramedics, police officers, long-term care workers, home health workers and correctional officers.

WHO GOT FINED – AND WHY

Roundup of most recent OSHA citations

Go to www.SafetyComplianceAlert.com/fines for more OSHA fines and injury settlements.

Worker dies under thousands of pounds of soil

An Alabama contractor was cited following an OSHA investigation into a fatal trench collapse that saw a worker die beneath thousands of pounds of soil.

Shortly after the employee entered to work on underground utility pipes, the trench collapsed around him.

“Research estimates that one cubic yard of soil weighs up to 3,000 lbs. – the weight of a small car – giving a worker buried in a trench little chance of survival.”

Fine: \$110,590

Company: Weaver Environmental Services Inc., doing business as WESCO, Huntsville, AL

Business: Water and sewer line structures construction

Reasons for fine:

One willful violation for failure to:

- protect employees working in trenches from cave-ins by using adequate protective systems

Two serious violations for failure to:

- provide support systems for sidewalks, pavements or appurtenant structures undermined during excavation
- inspect excavations, adjacent areas and protective systems after every rainstorm or other hazard-increasing occurrence

Manufacturer gets \$216K fine for repeat hazards

OSHA fined a Milwaukee manufacturer for multiple repeat and serious violations involving putting workers at risk of machine and noise hazards.

The company was inspected twice in 2020 and was cited for similar violations. During a January 2021 follow-up inspection, inspectors found the hazards hadn't been abated.

Fine: \$216,307

Company: Tramont Manufacturing

LLC, Milwaukee

Business: Metal tank manufacturing
Reasons for fine:

Three repeat violations for failure to:

- ensure employees used appropriate eye and face protection when required
- guard points of operation on machines
- put safety guards on machines with abrasive wheels

Nine serious violations, including failure to:

- clearly outline purpose and techniques to be used in energy control procedures
- conduct periodic inspections of energy control procedures
- ensure forklift operators were properly trained on forklift operations
- conduct frequent inspections of overhead cranes

Court fined \$25K after interpreters die from COVID

Cal/OSHA fined the Los Angeles Superior Court more than \$25,000 for multiple COVID-19-related violations, which the court plans to appeal.

The state agency notified the court July 7 that it found at least three health and safety violations during an inspection of the Pasadena Courthouse, which is operated by the Superior Court system.

All three of the violations are related to safety measures put in place for the court's interpreters, according to *Pasadena Now*.

Two full-time interpreters and one contract interpreter died from COVID-19 in 2021.

Fine: \$25,250

Company: Superior Court of California, Los Angeles

Business: Court

Reasons for fine:

Two serious violations for failure to:

- implement an effective injury and illness prevention program, including lack of COVID-19 prevention training for interpreters
- ensure physical distancing in the interpreters' lounge

WORKERS' COMP DECISIONS

Worker was injured but no one saw it: Can he collect?

A worker fell through a scaffold when an unsecured plank shifted, but no one else witnessed the injury. Can he collect benefits?

What happened: A construction worker was injured when he fell about 6 feet after an unsecured plank on a scaffold shifted. No one else witnessed the incident.

Company's reaction: No one saw the incident, and you must be lying since the planks were nailed down.

Decision: He could collect. The court found the worker was a credible witness, unlike some of his co-workers who were accused of nailing down the planks shortly after the incident occurred.

Cite: *Dyszkiewicz v. City of NY*, NY Court of Appeals, No. 27495/17E, 5/6/21.

Inhalation injury at work or pre-existing lung disease?

A worker with a history of lung issues suffers an inhalation injury at work. Can he get benefits?

What happened: The worker – who was already being treated for chronic obstructive pulmonary disease – was handling sodium hydrosulfite at work when he went into respiratory failure.

Company's reaction: You have a pre-existing condition which means this incident wasn't work-related.

Decision: He couldn't collect. Despite conflicting medical evidence, the court found the worker's respiratory failure was caused by aggravation of his pre-existing lung disease rather than a new, work-related injury.

Cite: *Hamilton v. Logan Water Care*, W. VA Supreme Court, No. 20-0047, 5/20/21.

REAL PROBLEMS, REAL SOLUTIONS

10 principles deliver safety results (part 2)

At the National Safety Council's fall 2021 conference, Brian Fielkow, CEO of GTI Group, discussed 10 principles he used to help deliver safety results he's proud of at his company.

(The following items conclude the list, which began in our Feb. 14 issue.)

6. If your processes aren't understandable by the intended audience, then you don't have processes. You just have words on paper.

GTI asked its drivers to write their handbook, *The Jetco Way*. The company gathered four or five drivers who were good at a particular topic together with a writer who wrote up what they said. The drivers reviewed what the writer put together. All processes are a maximum of four or five sentences.

Convert processes into checklists and use them. If you keep the checklists as simple as possible, you'll get better results. People don't need to be taught as much as they need to be reminded.

7. Dismiss severity. Fielkow says the fact that an incident had a major or minor outcome isn't the most important thing.

Example: A driver tears up some grass. No big deal? No. The driver wasn't situationally aware. It's only luck that the driver didn't hit a kid.

To be good at prevention, don't treat the behavior behind a minor incident any differently than a major one. Do root cause analysis 100% of the time. It doesn't all have to take a long time and be formal.

Fielkow says a lot of times we come to the table with our minds made up, and we form the analysis to meet our own conclusion. To counter that, bring in someone from another area to help with the analysis.

8. Focus on leading indicators. Most indicators are a look in the rearview mirror. Leading indicators predict outcomes.

If you want to reduce serious injuries, focus on near misses, property damage accidents and minor injury accidents.

Counting near misses is a leading indicator. Want to get more near misses reported? Stop calling them near misses. Instead, call them good catches. Make sure there's a way to report good catches confidentially.

9. Tear down silos. Companies need to have divisions. That's OK. Silos are the kiss of death. What constitutes a silo? It's a state of mind. If someone else is drowning, "too bad." That's a silo.

Fielkow says once upon a time, he would have Operations meetings on Monday, and he would hear a lot about how the Safety team doesn't get it. He'd have Safety meetings on Tuesdays, and he'd hear about Operations playing cat and mouse.

On Tuesday night, Fielkow says he'd take two aspirin and try to figure out how to create harmony. Fielkow says he created his own silos – it was his own fault.

We create silos by how we incentivize people and who we invite to the table at meetings. So Fielkow doesn't have Operations or Safety meetings anymore. Now they're in the room together.

Allowing people to think safety isn't their responsibility is a dangerous silo. Why? Because it allows workers to think that safety is the responsibility of the safety department, instead of being responsible for it themselves.

10. You can't win them all, don't try. Your employees have to be at the intersection of your company values and being technically excellent.

When you have a person who is really aligned with your values but isn't technically competent, you're going to try to train that person, or else they can't be at the company.

But what about an employee who is technically proficient, but they think the rules don't apply to them? Now you have a big problem.

You don't have to fire a person. Coach them. And then coach them some more. But at some point you have to come to the realization that some people are uncoachable.

TRAINING TIPS

Use strong policies to combat distracted driving

With the U.S. Department of Transportation rolling out its new highway safety strategy (*SEE PAGE 3*), now is a good time to remind drivers they shouldn't use portable electronic devices while driving.

Using a portable electronic device – texting on your phone or switching to a different Spotify playlist – while driving dramatically increases the risk of a motor vehicle injury or fatality, according to OSHA.

Prohibitions against distracted driving should be made clear by:

- having a strong policy that prohibits the use of portable electronic devices while driving
- establishing work procedures and rules that do not make it necessary to text while driving
- making safe driving an integral part of their business culture, and
- providing continuous driver safety training and communication.

Drivers should be trained on driving distractions and to not solely rely on navigation and other advanced technology systems.

In emergencies, think before rushing in to help

During an emergency situation, workers may feel the impulse to rush in and help fellow employees who may be in trouble.

That's understandable but should still be discouraged.

Why? Because it could turn a situation involving a single victim into one involving multiple victims.

For example, Indiana OSHA recently cited a company after one employee fell into a tanker trailer and succumbed to toxic gases.

Two other employees jumped in to help, but they almost succumbed to the toxic gas as well.

SAFETY REGS UPDATE

ENFORCEMENT

Lack of fall protection during bridge project leads to fatality

The Washington State Department of Labor & Industries (L&I) cited a construction company after a worker fell to his death during a bridge restoration project.

The worker fell 60 feet from the bridge deck to the ground below while laying concrete curing blankets on the bridge.

Investigators found managers and a foreman with Bellingham, WA-based Boss Construction were working side-by-side with workers and none of them were wearing fall protection.

Multiple employee interviews corroborated the lack of fall protection during the project and spoke to a lack of safety enforcement leading up to the fatal fall.

Many of the workers weren't using fall protection on the day of the incident and on other days.

Company slammed with \$284K fine

A catenary line – a horizontal line anchored at each end that workers can attach to for safety – had been installed, but it was only one side of the bridge deck.

That line spanned about 2,600 feet, but didn't span the entire 3,052 feet of the bridge, leaving about 200 feet on each end on one side of the bridge

without a line for workers to attach to as they walked on the bridge.

The other side of the bridge didn't have a catenary line at all and was completely unguarded as all the guardrails were removed several months prior to the incident.

L&I cited Boss with two egregious serious willful violations for failure to ensure workers used fall protection, leading to a \$284,000 fine.

Judge blocks vaccination rule for federal employees

A judge for the Southern District of Texas issued a nationwide preliminary injunction blocking a Biden administration executive order that required employees of federal agencies to get COVID-19 vaccinations.

The judge found Jan. 21 that the choice federal employees had to make between their jobs and getting vaccinated amounted to irreparable harm.

Statutory authority asserted by the federal government gives “the President substantial powers, but not so substantial as to ... require millions of federal employees to undergo a

medical procedure as a condition of their employment,” the judge said, according to law firm Vorys Sater Seymour and Pease.

Under the injunction, the federal government can't enforce the vaccine mandate for federal employees in any state or territory of the U.S.

The Department of Justice intends to appeal the decision.

No comp for wellness program injury

Can a worker get workers' comp if injured while participating in a company wellness program?

According to the Oregon Court of Appeals, no.

In *Watt v. SAIF Corp.*, an employee tripped and fell while walking through a residential neighborhood during her break. This was in participation with a company-sponsored wellness program.

She filed a claim, which her employer denied as not being work-related.

The appeals court upheld the denial because there was nothing in her regular work duties that exposed her to the risk of tripping on a crack in a sidewalk away from the jobsite.

SHARPEN YOUR JUDGMENT – THE DECISION

(see case on Page 2)

No, Pete's company lost when the court found that the inspector's alleged failure to follow OSHA's Field Operations Manual during the inspection didn't invalidate the legitimacy of the violations.

The supervisor in this situation – who was actually the owner of the company – admitted to OSHA via a signed statement, “My fall protection plan is roof anchors, ropes, fall harnesses, and rope grabs. The fall protection plan was not in effect upon my arrival at approximately 10:15 a.m. I do not know why the employees did not have the fall protection plan in effect.”

A similar statement from an employee was also admitted as evidence, so employee misconduct couldn't be proven

since the owner and the employees acknowledged there was a fall protection plan which wasn't in use that day.

■ ANALYSIS: PLANS ARE NO GOOD IF NOT FOLLOWED

The workers in this case were exposed to falls that could've seriously injured or killed them – the simple existence of the safety plan would've done nothing for them.

We've said it here before: Just having a safety plan is not enough if no one follows it.

Safety pros know this, but getting it across to management, supervisors and employees can be difficult at times, especially when it's busier than usual.

However, this is an obstacle that must be overcome.

Cite: *Secretary of Labor v. Bonded Roofing Services*, Occupational Safety and Health Review Commission, No. 20-0554, 12/14/21. Dramatized for effect.

FEDERAL ACTIVITIES

Government notices on workplace safety

Here's SCA's digest of key notices that appeared recently in the Federal Register (FR) or on OSHA's website concerning workplace safety issues. For the FR listings and other related links, go to SafetyComplianceAlert.com/category/federal-activities.

COURT DECISION

A Florida construction contractor was fined \$50,000 for lying to OSHA following two inspections in October and December 2017.

Alcir DeSouza, owner of DeSouza Framing Inc., pleaded guilty Jan. 26 to a felony count of making a false statement during an OSHA investigation.

The court found DeSouza lied to OSHA inspectors after the agency conducted investigations at two of his worksites, resulting in fall hazard violations and a proposed \$199,178 fine, according to the Department of Labor.

DeSouza was accused of willfully exposing workers to fall hazards by allowing them to work without fall PPE then lying about it to inspectors.

During both inspections, employees were observed working at heights of between 11 and 22 feet without using any fall protection devices.

The inspections were part of a Regional Emphasis Program for Falls in Construction.

MINING

The convergence of mines with oil and gas wells has recently become more of an area of concern for the Mine Safety and Health Administration (MSHA).

Nationwide, thousands of oil and gas wells penetrate coal seams that are being actively mined, and an accidental intersection could cause problems for miners.

MSHA and state agencies evaluate thousands of requests to mine within 150 feet of oil and gas wells every year.

Those evaluations are conducted under the "Pennsylvania Joint Oil and Gas Well Pillar Study," which was published in 1957.

Coal mines today are deeper than ever before and the proliferation of high-pressure gas wells has increased the potential consequences of an incident, according to MSHA.

New scientific information is now available, most notably downhole gas well surveys that show that depth has a big effect on the possible deviation between a well's surface location and its location at the coal seam level.

MSHA urges mine operators to review the agency's best practices for mining near oil and gas wells, which can be found at msha.gov/training-education/safety-topic-development-mining-near-wells.

RECORDKEEPING

Injuries sustained in a crash during an off-hours trip to work should be recorded as a work-related injury, according to OSHA.

The agency addresses this topic in a new standard interpretation letter that presents the following scenario:

As part of his normal workday, an employee commutes in his personally-owned vehicle from home to the workplace. At the end of his shift, the employee commutes from the workplace to his home. Later that same day, there is an emergency at the workplace, and the employee's supervisor calls him to return to work. The employee starts driving back to the workplace, but is involved in a crash resulting in an injury and hospitalization.

Can that injury be considered recordable?

In the letter, OSHA says that while injuries and illnesses occurring during an employee's normal commute from home to work, and from work to home, aren't work-related and not recordable, the scenario presented above is a different case.

Since the employee is traveling back to work "in the interest of the employer" then his travel becomes work-related and any injuries sustained during that travel time would be recordable.

WHERE TO GET HELP

NEW HOW-TO DOCUMENT ON SILICA DUST MONITORING

A new publication from the National Institute for Occupational Safety and Health (NIOSH) details how to implement monitoring for respirable crystalline silica.

This is primarily intended for industrial hygienists and safety professionals specifically within the mining industry, although those in other industries may also find it useful, according to NIOSH.

The document details how to implement field-based monitoring for respirable crystalline silica.

It was written for users with experience in respirable dust exposure assessment but who do not necessarily have specialized training in analytical techniques.

Info: cdc.gov/niosh/mining/works/coversheet2175.html

What safety officers told us

How much more likely is it that an injured worker's child will suffer from mental health disorders?

Emotional, behavioral issues

72%

Depression or anxiety

50%

Short attention span

40%

Source: National Institute for Occupational Safety and Health

NIOSH found that children with parents who were injured at work are far more likely to suffer from mental health disorders.

Info: bit.ly/32TEF5M

Each issue of SCA contains an exclusive survey to give safety professionals insight into what their peers nationwide are thinking and doing.

ANSWERS TO TOUGH SAFETY QUESTIONS

Safety pros like you face questions every day on how to keep your employees safe. On this page, you'll get answers to real-life questions and situations you could encounter in either a "Management Scenario" or "Experts' Solutions."

EXPERTS' SOLUTIONS

Blocked vaccination ETS withdrawn, but OSHA still working on COVID standards

Q: Since the U.S. Supreme Court blocked OSHA's COVID-19 vaccination-or-test emergency temporary standard (ETS) for employers with 100 or more employees, is the agency still looking to implement the standard?

A: For now, no. OSHA announced on Jan. 25 that it was withdrawing the ETS that would have required employers with 100 or more employees to mandate COVID-19 vaccines for their employees or subject them to weekly testing and mask wearing.

But there are some things to keep in mind – which are detailed below – according to law firm Shawe Rosenthal.

For example, healthcare employers need to remember there is a vaccine mandate in effect for those involved with Medicare and Medicaid programs, which the U.S. Supreme Court did allow while blocking the OSHA rule.

Another vaccination-or-test rule could be in the works

Q: Is OSHA working on a permanent vaccination-or-test standard for employers outside of health care?

A: Probably. In its announcement on the withdrawal of the COVID-19 vaccination-or-test ETS for employers with 100 or more employees, OSHA makes clear that it's not withdrawing the ETS as a proposed rule.

Shawe Rosenthal says that means a version of the ETS could be proposed as a

permanent standard at some point in the future.

The notice and comment period for the proposed rule closed on Jan. 19, and OSHA will likely review any comments it received, along with the restrictions imposed by the Supreme Court's opinion.

Healthcare standard could include vax requirement

Q: Is OSHA working on a permanent standard to replace its COVID-19 healthcare ETS and could that standard have a vaccination-or-test requirement?

A: Yes, the agency is working on a permanent standard to replace the healthcare ETS it withdrew in December 2021.

OSHA says it's focused on finalizing the permanent healthcare standard and promised to rely on the General Duty Clause and certain standards to protect healthcare workers in the meantime.

And while the original ETS didn't require vaccination, a permanent standard quite possibly could incorporate a COVID-19 vaccine mandate.

Like the mandate for healthcare workers involved in Medicare/Medicaid, a permanent COVID-19 healthcare standard with a vaccination requirement would likely be specific enough to satisfy legal requirements to move forward.

If you have a safety-related question, email it to Merriell Moyer at: mmoyer@bbp.com

OUTSIDE THE LINES

SECURITY CRIES FOWL: CHICKEN ARRESTED AS SPY

Let's face it, in today's world, workplace safety and security often go hand in hand.

And who in the U.S. takes security very seriously? The Pentagon.

Case in point: A chicken was recently detained at an undisclosed security checkpoint near the Department of Defense headquarters, according to the *Associated Press*.

The chicken – a Rhode Island Red, no less – was taken into custody by the Animal Welfare League of Arlington, VA, and has since been adopted.

Henny Penny, as the bird has been named, gained some notoriety as Jimmy Fallon performed a song about her on "The Tonight Show."

"Are you a normal clucker or an undercover spy?" Fallon sang.

Did you know ...

Warm-up before shoveling snow



Employees should **warm-up before shoveling snow** to avoid injuries and exhaustion.

Source: OSHA

Shoveling snow can be a strenuous activity. Workers should warm-up before shoveling, scoop small amounts of snow at a time and push the snow instead of lifting it.

This feature in each issue of SCA charts trends in national workplace safety and health to help safety professionals perform their jobs.

Safety

COMPLIANCE ALERT™

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March 14, 2022

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Fishing vessel incident offers valuable lesson on fatigue

■ Sleep-deprived captain took big risk, lost his ship

The term "impairment" is often associated with drugs and alcohol, although there's a well-known, yet often overlooked other aspect: fatigue.

Long hours and shift work can lead to fatigue, which workers often try to push through to get the job done – an honorable notion, but one that can come with dire consequences.

A recent National Transportation Safety Board (NTSB) investigation of the sinking of the fishing vessel *Tenacious* off the coast of Alaska offers a perfect example of this situation.

The captain of the *Tenacious* had 32 years of experience operating fishing

vessels. In July 2021, he and his crew of five were transitioning to fishing waters.

Awake for more than 20 hours

On July 23, the captain didn't get any sleep as he and the crew attempted to repair a skiff, which they eventually had to go ashore to replace.

Further, the captain was experiencing back pain and hadn't been sleeping well for a few days.

The crew was weary from taking care of the skiff, so the captain, who'd been awake for more than 20 hours, told everyone to get some sleep while he piloted the *Tenacious*.

(Please see Valuable lesson ... on Page 2)

RESEARCH

Report: U.S. needs respiratory protection framework

The COVID-19 pandemic highlighted the need for U.S. workers and employers to have a national respiratory protection framework to provide them with guidance and support in combating future respiratory hazards, according to a new report.

Throughout the pandemic, workers – and the public in general – have been required to wear some form of respiratory protection, but they've often had to overcome obstacles to do so in the form of availability and ever-changing guidance.

Workers need to be able to turn to a clear and authoritative source of information on respiratory hazards and how to protect themselves from such threats, according to *Frameworks for Protecting Workers and the Public from Inhalation Hazards*, a new

report from the National Academies of Sciences, Engineering, and Medicine.

More authority for OSHA

The report recommends that Congress revise the Occupational Safety and Health Act to give OSHA authority to ensure respiratory protection for workplaces currently outside its jurisdiction.

The agency should "adopt the broadest permissible interpretation of 'employee' and 'employer' to expand coverage of its respiratory protection requirements," the report states.

Workers covered under the expanded definitions should include gig economy workers, unpaid volunteers, domestic workers in residential settings and certain independent contractors.

More info: tinyurl.com/637report

CRIMINAL CHARGES

WORKERS' COMPENSATION

Owners to serve jail time for comp fraud

A California business owner and her husband will be serving jail time and paying more than \$925,000 in restitution after pleading guilty to workers' compensation fraud totaling almost \$1 million.

Carmen Hall Soruco and her husband, Antonio Soruco, were sentenced Feb. 7 to each serve 120 days in jail and pay more than \$925,000 in restitution to the State Compensation Insurance Fund (SCIF).

Hall Soruco was also sentenced to two years of probation following her guilty plea on multiple felony counts, while Soruco will serve one year of probation after pleading guilty to multiple misdemeanor charges.

An investigation into Soruco Structures, a general contractor company, began after an employee filed a workers' compensation claim,

Failed to report employees, payroll

The company hadn't reported employees or payroll on their workers'

compensation insurance policy until the claim was filed.

Investigators found the couple committed workers' compensation insurance premium fraud by failing to report employees and payroll to SCIF from Oct. 15, 2013, through Dec. 8, 2016, leading to a premium loss of \$585,666.

Valuable lesson ...

(continued from Page 1)

Early on July 24, the captain fell asleep and lost control of the vessel, which drifted into rocks in shallow water along the coast.

The crew attempted to save the vessel, but ultimately had to abandon it.

One crew member suffered a minor injury, and the vessel, which was worth \$660,000, was a total loss.

The captain claimed responsibility for the incident, stating to investigators that the owner would not have faulted him if he had chosen to stay in port.

Perceived loss = acceptance of risk

The NTSB calls this an example of the prospect theory of human decision-making, meaning "human beings are more likely to accept higher levels of risk when faced with the perception of guaranteed future losses."

The captain knew that if he and his crew missed the July 24 fishing waters opener they'd suffer financial losses.

To avoid that perceived loss, his risk tolerance was higher, resulting in the decision to get underway later than planned and travel during normal sleep hours all while in a fatigued state.

The National Safety Council says employers can help address fatigue by:

- optimizing schedules to avoid long shifts and permanent night shifts
- providing adequate time to recover between shifts
- adopting a culture that promotes sleep health
- allowing napping wherever feasible, and
- educating employees about fatigue.

SHARPEN YOUR JUDGMENT

This feature provides a framework for decision making that helps keep you and your company out of trouble. It describes a recent legal conflict and lets you judge the outcome.

■ SERVICING MACHINE MINOR ENOUGH TO BE EXCEPTION?

Safety Manager Pete Travers leaned back in his office chair and stretched.

"I'll have this presentation finished within the next hour barring any distractions," Pete said.

His phone rang.

"Great," said Pete. "Didn't I just say distractions were something I didn't want?"

He looked at his phone and saw that an old friend was calling.

Pete sighed and answered the phone.

'It's pretty specific'

"Hello Carl. How are you?" Pete asked.

"Hi Pete," said Carl. "To be honest, I'm not doing that great at the moment. That's why I'm calling.

"My company is being cited by OSHA, and I was hoping you could give me some advice," Carl added.

"OK, can you give me the details?" asked Pete.

"One of our production workers injured her hand on the conveyor belt while she was cleaning up at the end of her shift," Carl explained.

"OSHA says we should have shut down the conveyor and locked it out for cleaning," he added. "But we thought that cleaning fell under the minor servicing exception – OSHA says otherwise."

"That exception is pretty specific." Pete said. "Cleaning could fall under it, I guess. It would have to be a pretty minor operation, though."

Carl's company fought the citation. Did it win?

■ *Make your decision, then please turn to Page 6 for the ruling.*

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WHAT'S COMING

PANDEMIC

Companies fined after COVID outbreak

■ MANAGEMENT'S ACTIONS
CONTRIBUTED TO VIRUS' SPREAD

Three companies were collectively fined more than \$285,000 after 250 workers at the same warehouse contracted COVID-19.

The Washington State Department of Labor & Industries (L&I) opened multiple inspections after a local health department reported the outbreak.

United Natural Foods Inc., Capstone Logistics LLC and Prime 360 were all cited for knowingly putting workers at risk of COVID-19 exposure, and six other businesses associated with the warehouse were cited for less serious COVID-19-related violations.

Workers from a Lewis County warehouse – and who were being housed in several Thurston County hotels – got sick from COVID-19 and walked to a nearby hospital for help.

Ill workers afraid to lose their jobs

They were afraid they would lose their jobs if they went home sick, according to an L&I news release.

About one in four employees

working at the warehouse between July 7 and Oct. 5, 2021 tested positive for COVID-19. Five out of the 253 who did test positive had to be hospitalized.

“Our investigation uncovered a widespread outbreak that put employees, their families, and their communities across 10 counties at risk for COVID-19,” L&I Director Joel Sacks said in the news release. “The actions these companies took or failed to take undoubtedly made it worse – contributing to faster and broader spread of the virus in the workplace.”

United Natural Foods, the owner of the warehouse, was fined \$140,000 for failing to provide contact information for COVID-positive employees, claiming it didn't know who some workers were employed by and allowing COVID-positive employees to come to work.

Capstone Logistics was fined \$75,400 for failing to verify worker vaccination status, enforce mask use and prevent COVID-positive workers from coming to work.

Prime 360 was fined \$70,000 for failing to verify worker vaccination status.

WHISTLEBLOWER

Contractor sued for firing worker with safety concerns

A Florida security contractor is being sued by the U.S. Department of Labor (DOL) after allegedly terminating a worker with safety concerns regarding COVID-19 exposure and firearm storage protocols.

The worker filed a retaliation complaint with OSHA, leading to an investigation and lawsuit by the DOL in the U.S. District Court for the Eastern District of Texas.

Move prompts COVID complaints

VRP Group Inc., doing business as Regius Investigations and Protective Services, is accused of illegally firing the worker in August 2020, shortly after the worker texted supervisors on a secure messaging app to report

hazardous working conditions.

The worker was part of a group of Regius employees assigned to work for Entergy Texas to secure property near Port Arthur.

This group was initially based in a hotel but was later moved to temporary housing at another location.

The worker was concerned about the move and conflicts that would arise with social distancing and firearm storage policies, and they brought these concerns to supervisors.

An investigation by OSHA found that the company violated federal whistleblower provisions by terminating the employee for engaging in the protected activities of making a good faith health and safety complaint.

TRENDS TO WATCH

Watch what's happening in various states. Some actions indicate trends.

■ ANOTHER STATE SAYS IT WILL PROTECT OFF-DUTY WEED USE

Montana is joining the growing list of states that will protect the off-duty use of marijuana.

Bill HB 701, which went into effect Jan. 1, 2022, amended the state's lawful off-duty conduct statute to include marijuana as a lawful product.

That means employers can't deny job applicants or discriminate against current employees because of their legal use of marijuana during non-working hours, according to law firm Hunton Andrews Kurth.

The prohibition includes a number of different employment actions, including hiring decisions, compensation, promotion, and the terms, conditions and privileges of employment.

But nothing in HB 701 prevents an employer from taking adverse action against an employee who is intoxicated at work. The law only protects lawful “off-duty” conduct.

■ COMPANY SUED FOR WORKERS' COMP FRAUD

A New York real estate company is being sued by its workers' compensation insurance provider after allegedly lying about the number of workers it employed.

Alpha Omega Realty is being accused of applying for workers' compensation insurance for one employee in 2016, but actually employed more than 90 people at the time and avoided nearly \$1.5 million in premiums.

The insurer, Charter Oak Fire Insurance Co., is suing Alpha Omega and its owner, Anthony Frascione, for fraud and demanding the premium that was never paid, according to the *Westchester & Fairfield County Business Journals*.

WHO GOT FINED – AND WHY

Roundup of most recent OSHA citations

Go to www.SafetyComplianceAlert.com/fines for more OSHA fines and injury settlements.

Worker caught in, killed by crane trolley drive shaft

OSHA cited an Alabama equipment manufacturer following an investigation into the death of an apprentice who got caught in a crane trolley's drive shaft.

The 22-year-old worker was part of a five-man team that was repairing a 50-ton hoist while on top of a crane bridge 30 feet in the air.

He was killed while guiding a heavy steel cable onto a hoist drum.

Fine: \$89,141

Company: SPI/Mobile Pulley Works, Mobile, AL

Business: Construction machinery manufacturing

Reasons for fine:

21 serious violations, including failure to:

- provide employment free from recognized crushed-by hazards likely to cause death or serious physical harm
- train employees on correct use of personal fall protection equipment
- plainly mark rated load of crane on each of its sides
- complete periodic inspections of cranes
- provide adequate machine guarding
- evaluate performance of powered industrial truck operators every three years

Worker's fingers severed by press: \$412K OSHA fine

A Texas manufacturer was cited by OSHA after a worker's fingers were severed inside a 500-ton hydraulic press.

The company has a history of violations with a citation in 2014 for 34 serious and other-than serious violations and two citations in 2015 for a total of four willful, six serious and three other-than serious violations.

Fine: \$412,750

Company: D&D Manufacturing Inc., El Paso, TX

Business: Metal stamping manufacturer
Reasons for fine:

Three willful violations for failure to:

- provide employment free from recognized caught-between hazards likely to cause death or serious physical harm
 - guard points of operation of machinery
 - ensure point-of-operation devices adequately protected machine operators
- 13 serious violations, including failure to:*
- train employees on noise hazards
 - ensure employees wore eye, foot and hearing protection when required
 - take unsafe powered industrial trucks out of service
 - ensure containers of hazardous chemicals were properly labeled

Roofers caught without fall PPE 6 times in 3 years

An Ohio contractor was cited for the sixth time in three years for exposing roofers to fall hazards on its jobsites.

OSHA cited the contractor for similar hazards in February 2021, June 2020 and May 2018, as well as another contracting company with the same owner in April and September 2019.

Fine: \$136,453

Company: JMH Roofing LLC, Medina, OH

Business: Roofing contractor

Reasons for fine:

Two willful violations for failure to:

- ensure employees used eye or face protection when exposed to eye or face hazards
- ensure employees engaged in construction activities 6 feet or more above lower levels are protected by guardrail, safety net or personal fall arrest systems

Two repeat violations for failure to:

- initiate programs providing regular inspections of jobsites, materials and equipment
- ensure employees wore protective helmets in areas where they were required

WORKERS' COMP DECISIONS

Can injured worker collect from general contractor?

A contractor's injured worker filed a claim against the general contractor in charge of a worksite. Can he collect benefits?

What happened: A worker with an elevator installation contractor was injured on a jobsite. He filed a Labor Law claim against the worksite's general contractor.

Company's reaction: Your company controlled the work you were doing, so we're not responsible for your injury.

Decision: He couldn't collect. The fact that the general contractor held safety meetings and completed daily safety reports demonstrates only that it was responsible for the overall safety of the site, according to the court.

Cite: *Moldaver v Pref. 34 E. 51st St., LLC*, NY Court of Appeals, No. 162881/15, 5/4/21.

Can worker with bad knee get benefits for injury?

A worker with a pre-existing condition injured his right knee while carrying a heavy tarp across a railroad track. Can he collect?

What happened: The worker was carrying a heavy tarp across some railroad tracks when he tripped and fell, injuring his knee. Medical exams showed he had pre-existing osteoarthritis.

Company's reaction: You may have injured your knee at work, but the more extensive damage is from your pre-existing condition.

Decision: He was able to collect for the work injury, but further benefits were terminated since his continuing medical condition was related to osteoarthritis.

Cite: *McKinney v. Kingston Mining*, W. VA Supreme Court, No. 20-0137, 5/20/21.

REAL PROBLEMS, REAL SOLUTIONS

A risk-based approach to manage fatigue

Why aren't fatigue and lack of good sleep addressed more often as factors in workplace safety?

There are several barriers:

- lack of awareness and information
- often not recognized as a safety and health hazard in the workplace, and
- lack of understanding of the strategies needed to manage it.

Workplace culture can also contribute. Are long hours or "working through" fatigue rewarded? A superperson mentality is common in a lot of industries.

And even if fatigue does affect a worker, they might not want to tell their co-workers about it.

Hands down, this "tough guy" attitude is the biggest failure we face in trying to manage fatigue in the workplace.

If you drove by a construction site and noticed a worker resting, sitting against a building with their hardhat over their eyes, what would you think?

Many would think the worker is being lazy.

What if, instead, we thought, it's a good thing that the worker is using their break to get some needed rest?

This mentality has to change to fight fatigue in the workplace.

Share info with employees

How do we overcome these barriers?

One way is to share information with employees on how sleep – or lack of it – affects people.

When we sleep, blood vessels in the brain shrink, allowing spinal fluid in between the vessels to clear out toxins and replenish our brain cells.

Reaching the fourth stage of sleep – REM sleep – is essential because, besides being the dream stage, that's when memories are processed and long-term learning occurs.

It takes 90 to 120 minutes to go through the four stages of sleep. If someone is getting seven to eight hours of sleep but doesn't feel rested, quality of sleep may be the issue.

People who work odd hours should know that due to circadian

rhythms, the body's 24-hour cycle, if you're working at 2 a.m., you're at a disadvantage. During off hours, neurotransmitters convey information more slowly. People can work during odd hours, but they're impaired and need to recognize that.

Some specific best practices:

- Schedule work so higher risks don't have to be taken at odd hours
- If you can't eliminate higher risk tasks at odd hours, make sure you take extra precautions to mitigate the risks
- Document anti-fatigue measures so there's no guesswork on what needs to be done
- Train employees about fatigue management – it will increase employee engagement
- Make sure to rule fatigue in or out during incident investigations, and
- Align all of these fatigue and management practices in your existing safety program.

Maximizing naps

Naps can be a good way to fight fatigue, but there are ways to maximize their effectiveness.

Timing is everything when it comes to naps.

A nap should be either under 30 minutes or over 90 minutes.

Reason: If it's under 30 minutes, the person will awake during stage one or two sleep and feel refreshed.

If it's over 90 minutes, they'll gain the benefits of REM (stage 4) sleep.

What you don't want to do is nap between 30 and 90 minutes. That will mean waking up during third stage sleep which produces a groggy feeling.

Another nap trick: Have a nappuccino. Grab a caffeinated beverage and drink it quickly. Then set an alarm for a 20-minute nap.

Caffeine takes about 20 minutes to kick in. So after you're done napping, the caffeine will do its work.

(Based on a presentation by Susan Sawatzky, Director, In-Scope Solutions, Calgary, Alberta, at the ASSP's September 2021 conference)

TRAINING TIPS

Get them to remember key point with this step

Safety professionals put time and effort into their presentations and training sessions.

The last thing you want is people walking away without a safety talk making any kind of impression on them.

Idea: Ask participants to repeat back one (and only one) important part of your talk.

For example say, "We're all responsible for looking out for each other's safety."

Ask a member of the session, "Who's responsible for keeping you safe on the job?"

A correct answer would be, "My co-workers and I are."

Then ask the group, "Who's responsible for safety here?" If they don't all answer, ask the question again until they all reply in unison.

Do workers understand safety data sheets?

It's not enough to provide safety data sheets (SDS) for the chemicals, solvents and cleaning materials at your workplace.

Employees need to be trained at least once on how to read a SDS so they understand why a chemical is hazardous and what other kinds of substances it shouldn't be allowed to come in contact with.

Staffers also need to know where they can find the binder with an SDS or where they can access the info online.

You can post the SDS for all of your chemicals on your company's website or post easy-to-find hypertext links to SDS. Show staffers how they can do this on their phones or using company computers.

SAFETY REGS UPDATE

SAFETY PROGRAMS

Healthcare employers called on to address high injury rates

Healthcare workers experienced a whopping 249% increase in injury and illness rates in 2020, and OSHA is now calling on employers in the industry to implement proactive safety and health programs to keep those workers safe.

During the COVID-19 pandemic, workers in the healthcare and social assistance industries combined suffered more injuries and illnesses than workers in any other industry in the U.S.

Now, OSHA wants healthcare employers to take immediate action to help make 2022 a less hazardous year for workers in the industry.

One good way to combat workplace injuries and illnesses is to adopt a proactive safety and health program to address hazards, endorse training and use preventive measures to keep employees safe and healthy.

Kansas hospital shining example

An example of how effective such a program can be is Community Hospital Onaga, a Kansas-based facility that's part of the Community HealthCare System's nonprofit healthcare system.

The hospital contacted OSHA's On-Site Consultation Program about

enhancing workplace safety in 2000.

Following visits from program staff, the hospital corrected all hazards inspectors identified and then continued to improve its safety and health programs.

By December 2002, OSHA awarded the facility Safety and Health Achievement Recognition Program (SHARP) status, and the hospital has since kept its injury-and-illness rates below the industry average.

The facility's SHARP status has been renewed eight times, with its most recent achievement having occurred in June 2021.

Bakery cited: Allowed teen to operate slicer

A Florida bakery is in hot water with the U.S. Department of Labor (DOL) after investigators found a 13-year-old "volunteer" worker was allowed to operate a power-driven bread slicer.

Bread & Co. engaged the 13-year-old as an unpaid volunteer then had the teen undertake a hazardous occupation in violation of the Fair Labor Standards Act (FLSA),

according to a DOL news release.

The company "used a minor as free labor and then exposed the child to a dangerous machine with the potential to cause serious injury in violation of federal law," Wage and Hour Division District Office Director Wildalí De Jesús said in the news release.

Wage and Hour Division investigators also found the company's pay practices violated the wage requirements of the FLSA.

A fine of \$9,979 was assessed to Bread & Co. for the child labor law and other FLSA violations.

New rule would update industrial truck standard

OSHA announced Feb. 15 that a new proposed rule will update the design and construction requirements for the powered industrial trucks standards for general industry and construction.

The rule would add references to the latest design and construction requirements published by the American National Standards Institute and Industrial Truck Standards Development Foundation.

SHARPEN YOUR JUDGMENT – THE DECISION

(see case on Page 2)

No, Carl's company lost the case when the court found the end-of-shift cleaning didn't fall under the lockout/tagout (LOTO) standard's minor servicing exception.

The LOTO standard defines service or maintenance as "activities such as constructing, installing, setting up, adjusting, inspecting, modifying, and maintaining and/or servicing machines or equipment."

Cleaning – along with unjamming machines, making tool adjustments or changing tools – is included in the list of other activities associated with servicing.

All of these activities expose employees to unexpected energization of equipment, according to the court.

The court found the company should have required

the conveyor belt to be shut down and locked out for such a thorough cleaning.

■ ANALYSIS: EXCEPTIONS ARE RARE, WELL-DEFINED

While some OSHA standards do come with exceptions, they're infrequent and are usually very specific, as this case demonstrates.

For example, for the cleaning involved in this case to fall under the exception, it needed to be a very minor operation that presented no extra risk to employees than those presented by their regular duties.

In this situation, guards were removed and hands were placed closer to moving parts than normal duties required.

Cite: *Secretary of Labor v. Anthony Marano Co.*, Occupational Safety and Health Review Commission, No. 19-0622, 12/20/21. Dramatized for effect.

FEDERAL ACTIVITIES

Government notices on workplace safety

Here's SCA's digest of key notices that appeared recently in the Federal Register (FR) or on OSHA's website concerning workplace safety issues. For the FR listings and other related links, go to [SafetyComplianceAlert.com/category/federal-activities](https://www.safetycompliancealert.com/category/federal-activities).

CHILD LABOR LAW

Two fast food restaurants in South Carolina were fined by the U.S. Department of Labor (DOL) after an investigation revealed teen workers were employed in hazardous occupations.

The DOL's Wage and Hour Division conducted investigations at several Burger King, Subway, Popeyes and Frodo's Pizza locations and found multiple child labor law violations, a few of which involved safety hazards.

Two Subway locations operated by Pleasantway Inc. were fined \$4,902 after investigators discovered four 15-year-olds were employed in "prohibited baking activities," according to a DOL news release.

One Frodo's Pizza restaurant allowed three 16-year-old employees to work as delivery drivers. Federal law prohibits minors from operating motor vehicles as part of their occupation. The restaurant was fined \$3,006.

Several other restaurants were fined for allowing teens to work hours deemed excessive under the Fair Labor Standards Act.

ENFORCEMENT

OSHA cited a federally-operated refinery for its unsafe handling of chemicals, including the agency's first use of the egregious violation policy against a federal facility.

The refinery, an industrial gas manufacturing facility owned by the U.S. Department of Interior's Bureau of Land Management, was investigated following employee complaints to the Department of Interior's Office of the Inspector General.

OSHA issued 21 notices of unsafe

workplace conditions involving process safety management that would carry a private sector penalty of \$1,023,987.

Five willful violations were labeled egregious, which marks the first time OSHA has ever used its egregious policy against a federally operated facility.

All five of those violations were for failure to perform inspections on processing equipment.

HEARING PROTECTION

Northrop Grumman's facility at St. Augustine, FL, won the 2022 Excellence in Hearing Loss Prevention Award.

The award – part of the National Institute for Occupational Safety and Health (NIOSH) Safe-In-Sound Award Program – is given to companies that exceed normal expectations to protect their workers' hearing, incorporating prevention measures into daily work practice.

The Northrop Grumman facility is an example of these practices, according to NIOSH contest judges, who found the company demonstrates a strong safety culture by:

- implementing noise controls
- adopting buy-quiet strategies in the purchase of new equipment and tools
- providing several alternatives of hearing protection devices, hearing protection fit-testing, and state-of-the-art communication-enhanced electronic hearing protection devices as needed
- carefully reviewing and analyzing audiometry results aiming to identify early changes in hearing, and,
- continuously improving their training to ensure relevance.

The facility engages employees at all levels in these initiatives.

The Safe-In-Sound 2022 Innovation in Hearing Loss Prevention Award went to Rational Acoustics, an audio software development company that designed software to manage sound exposure risk for live sound mixers, event crew and concert attendees.

WHERE TO GET HELP

■ VISUALIZATIONS SHOW TRENDS IN LEAD EXPOSURE

The National Institute for Occupational Safety and Health (NIOSH) has a new set of interactive data visualizations on workplace lead exposures.

These visualizations show the latest trends in lead exposures by year, state and industry.

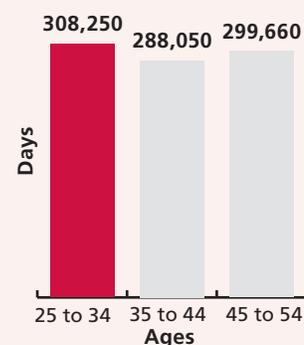
Data used to support the visuals come from the NIOSH Adult Blood Lead Epidemiology and Surveillance (ABLES) data set, which is used to examine U.S. trends in adult workplace lead exposure, identify where exposures occur and find ways to prevent further occurrences.

States provide NIOSH with ABLES data related to workplace lead exposure, including information on workers' blood lead levels.

More information: cdc.gov/niosh/topics/lead/trends.html

What safety officers told us

Among construction workers, which age range saw the most days away from work due to injury?



From 2011 to 2020, workers of ages 25 to 34 saw an increase in injuries resulting in days away from work. From 2019 to 2020, all age group saw a sharp increase.

Each issue of SCA contains an exclusive survey to give safety professionals insight into what their peers nationwide are thinking and doing.

ANSWERS TO TOUGH SAFETY QUESTIONS

Safety pros like you face questions every day on how to keep your employees safe. On this page, you'll get answers to real-life questions and situations you could encounter in either a "Management Scenario" or "Experts' Solutions."

Worker says supervisor dressed him down for driving forklift 'a little too fast'

The Scenario

"Alright, now I have you thinking safe, so let's get to work," Manager Mike Kelly said, closing his morning safety meeting.

Workers filed out of the conference room and began heading toward their respective work areas.

However, one remained behind.

"Mike, I need to talk to you about something," said Todd McAllister, a day shift dock worker who was hired just a few months ago.

Safety used as an excuse

"How can I help you, Todd?" Mike asked as he gathered up his meeting materials.

"My supervisor, Jack Hall, yelled at me yesterday in front of the whole dock crew," Todd said. "He used safety as an excuse to dress me down."

 Click www.safetycompliancealert.com/category/what-would-you-do/ to see other safety pros' comments on challenging scenarios

"What happened?" Mike asked.

"OK, I'll admit I was driving my forklift a little too fast – we were busy, after all – but that's no reason to yell at somebody," Todd said.

"When you say he yelled?" Mike began to ask.

"He hollered at me from across the dock, then stomped over and dressed me down like he was some kind of drill sergeant," Todd explained. "In front of everyone, no less."

I've worked with Jack for years, and this isn't like him, Mike thought. But there was that one time about 10 years ago, he caught two of his guys racing their forklifts down the dock – that had him pretty upset, and rightfully so, in my opinion.

If you were Mike, what would you do in this situation.

Reader Responses

1 Joseph Wickenhauser, Safety Excellence Coordinator, Wieland, E. Alton, IL

What Joseph would do: I would say to Todd, "I understand that no one likes being yelled at, but you did say you were across the dock from Jack. So he would have had to raise his voice for you to hear him and for safety concerns he probably wanted you to slow down right away. You need to slow down for everyone's safety."

Then I would speak with Jack to get his version of events, and if warranted, have a conversation with him about better coaching methods.

Reason: You always have to hear both sides.

It's not uncommon for someone with hurt feelings to exaggerate

the situation. Todd admittedly was driving too fast, so he needed a warning or coaching.

2 Elise Allen, EHS Program Manager, Jergens Inc., Cleveland

What Elise would do: I would talk to Jack to hear his side of the incident. But it sounds like some "retraining" of employees is needed for Todd and maybe a few others, as well as some supervisor tips for Jack.

But there is always more to the story than what we are first told. Maybe Todd had already been reprimanded for excessive speed.

Reason: I know from experience that all of the operators have a different idea of what is the right speed and horn honking frequency.

I have had many conversations with operators when I get a tip of bad driving.

OUTSIDE THE LINES

■ HE CAN PULL A CAR 27 YARDS WITH HIS SHOULDER BLADES!

Musculoskeletal disorders, or MSDs, are a common type of workplace injury that many safety pros do their best to address.

Repetitive stress and working at awkward angles are things most people are told to avoid.

But Christian Enmanuel Castellanos is different. He's looking to break a world record – with his shoulder blades.

The Cuban man recently claimed he broke the Guinness World Record for pulling a car with his shoulder blades, dragging the 2,425-pound vehicle more than 27 yards, according to *Reuters*.

Earlier this year – and in defiance of ergonomics specialists everywhere – Castellanos claims he crushed 82 beer cans between his shoulder blades in a minute, beating the Guinness record by 14 cans.

Did you know ...

Train workers on the risks from all chemical hazards in the workplace



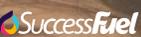
Workers should **know** what **chemicals** are **present** and **how to protect** themselves from those **hazards**.

Source: OSHA

According to OSHA, employees should be trained on the chemical hazards they're exposed to in the workplace as well as easy access to safety data sheets.

This feature in each issue of SCA charts trends in national workplace safety and health to help safety professionals perform their jobs.

News & Training SafetyAlert

Powered by  SuccessFuel

April 2022

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Was her trip and fall really unexplainable? 9

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Lessons Learned from comp claims & injury lawsuits



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News Briefs

Safety stories you might have missed

Fine increase affirmed for contractor with fall violations

February 28, 2022

An Occupational Safety and Health Review Commission judge affirmed multiple citations and a total of \$45,000 in fines against a New Jersey contractor accused of exposing workers to fall and other safety hazards.

[Read more](#) 

New campaign addresses injury trends in mining

published March 2, 2022

The U.S. Mine Safety and Health Administration (MSHA) launched a new safety campaign Feb. 28 in response to recent trends in mining incidents resulting in injuries and deaths.

Many of these incidents could have been prevented with proper training and attention to tasks, leading MSHA to initiate its Take Time Save Lives campaign.

[Read more](#) 

Can we take our masks off at work now? Not so fast

March 3, 2022

Yes, the U.S. Centers for Disease Control and Prevention (CDC) relaxed its masking recommendations Feb. 25. for healthy people living in low- or medium-risk areas.

And yes, masks are only recommended in public if an individual's community is categorized as high risk by the CDC.

[Read more](#) 

'Active' seat for truckers helps reduce back pain

March 4, 2022

A new type of seat may lead to fewer cases of low back pain and other musculoskeletal disorders for truck drivers in the near future.

Researchers with the National Institute for Occupational Safety and Health (NIOSH) found that a new "active" seat reduces truck drivers' exposure to whole body vibration, which often leads to musculoskeletal disorders, including low back pain.

[Read more](#) 

Employer lied about whistleblower, must pay \$958K

March 7, 2022

A private aviation company in California was ordered to pay \$958,000 for retaliating against a whistleblower by getting them fired from their new job.

[Read more](#) 

Owner harassed inspectors, judge forces him to comply

March 7, 2022

A Missouri mine operator who harassed inspectors and prevented an investigation was recently forced by a federal judge to allow the inspection to continue.

[Read more](#) 

News Briefs — Safety stories you might have missed

Proposed rule could add new type of drug test

published March 8, 2022

A rule proposed by the U.S. Department of Transportation (DOT) could add a new type of drug test for transportation employees covered by federal regulations.

The notice of proposed rulemaking was published in the *Federal Register* Feb. 28, and would see the addition of oral fluid drug testing to combat employee cheating on urine drug tests.

[Read more](#) 

Midwest gets emphasis program on hearing protection

March 8, 2022

In 2020, the U.S. Bureau of Labor Statistics found that about half the nation's workers reported not using hearing protection despite being exposed to noise hazards.

To aid in reducing the risk of noise exposure and to promote hearing protection programs, OSHA's Kansas City office is introducing a regional emphasis program (REP) focused on hearing protection.

[Read more](#) 

Company fined \$17.5K after docking safety rep's wages

March 8, 2022

A Missouri cement company is in hot water with the federal government after reducing a worker's wages while she was assisting inspectors during a site visit.

The worker was paid less per hour for the time she spent as a miner representative with U.S. Mine Safety and Health Administration (MSHA) inspectors.

[Read more](#) 



FREE WHITEPAPER FROM



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WAS HIS ILLNESS JOB-RELATED?

Safety|NewsAlert

LEGAL

Worker can pursue lawsuit for kidney disease

 by Merriell Moyer

How can an illness that's not considered job-related be tied to the workplace in order to file a lawsuit that avoids workers' comp exclusivity provisions? By showing the illness may have been triggered by a workplace activity.

That's what the Fifth Circuit Court of Appeal for Louisiana recently found in its decision to revive a worker's claim for benefits due to an employee's kidney disease and hypertension resulting from exposure to lead-based paint.

Scraping lead paint leads to illnesses

Edward Jackson worked in the maintenance department of the Jefferson Parish School District from 1997 through 2017. During that time, he worked at two different schools

where he was required to scrape and dry-sand lead-based paint from window frames, railings, doors and walls.

In 2005, Jackson began to develop kidney disease and associated hypertension, and in 2019 he was told by a doctor that his medical conditions were related to his exposure to toxic levels of lead at work.

Worker: They knew about the hazard but didn't address it

On July 27, 2020, Jackson filed a petition for damages against the school board claiming that he was constantly exposed to deteriorated lead-based paint while on the job, which led him to have elevated levels of lead in his blood.

He claimed the school board:

- was aware of the hazard but took no action to address it
- failed to provide employees with a decent, safe and sanitary work environment, and
- was responsible for other acts that would be discovered during an investigation and trial regarding his claims.

Jackson also claimed the school board had actual knowledge of the lead exposure and deliberately and repeatedly exposed him to the hazard, which caused his kidney disease and hypertension.

Chronic lead poisoning covered by workers' comp?

The school board claimed immunity to the lawsuit under the Louisiana

Worker can pursue lawsuit for kidney disease

Workers' Compensation Act (LWCA). Jackson argued that chronic lead poisoning didn't qualify as an occupational disease under the LWCA.

A trial court dismissed Jackson's lawsuit, finding that his illnesses were job-related and the school board was protected by the state's workers' compensation exclusivity provisions.

Illnesses aren't addressed by state law

However, the appeals court found that Jackson's medical conditions were not occupational under the LWCA.

"An occupational disease means only that disease or illness which is due to causes and conditions characteristic of and peculiar to the particular trade, occupation, process or employment in which the employee is exposed to such disease," the appeals court decision states.

Occupational diseases include injuries due to work-related carpal tunnel syndrome, but conditions like degenerative disc disease, spinal stenosis, mental illness and heart-related diseases are specifically excluded from the definition of occupational disease.

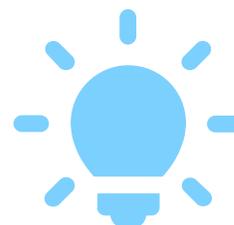
The illnesses claimed by Jackson – kidney disease and hypertension

– aren't specifically addressed by the definitions of the LWCA, so they must be addressed on a case-by-case basis dependent on whether they're due to conditions characteristic of the occupation.

Because Jackson's illnesses aren't covered under workers' compensation law, yet may have been triggered by his job duties, the appeals court vacated the trial court's decision and allowed Jackson's lawsuit to proceed.

Training Tips

Catch workers in the act of doing the right thing



Supervisors are often seen as the office bad guys: They're just waiting for workers to mess up so they can bust them.

This puts workers on edge when Supervisors are nearby – and can lead to their getting sloppy.

Build trust with workers by catching them doing things right.

Walk the floor, and when you see people following procedure to the letter or putting their training to work, stop and congratulate them.

Be sure to do it in a way that other workers know who's being recognized and for what. This shows you're looking out for your people – not for mistakes.

Watch out for awkward postures to reduce injury

When workers have to repeat awkward postures every day to get the job done, it can lead to ergonomic injuries. Be on the lookout for tasks that make workers:

- reach
- twist
- bend
- kneel
- squat

It's best for workers to avoid doing jobs that require them to do any of the above repeatedly. It might not lead to an injury right away, but it could down the line.

Case Study

The power of recognizing workers' safety efforts



What are you doing to encourage employees to be motivated about safety?

The final step (after adding motivators and neutralizing demotivators) to build safety motivation is recognizing those who are going above and beyond.

Here's a positive experience I witnessed:

Leadership supported safety

A company with 70 locations had one that was not only their best, it was best in their industry.

After looking at all their data, all their indicators, all their cultural surveys, I went to the site to figure out what's going right that we could learn from.

There was an unquestionable positive perception of leadership's support for safety at this site.

Why? What happened that led to this positive perception?

It was one story that helped create that perception. One third of the workforce I interviewed told me the same worker's story. It had gone viral at the plant.

Reinforce what you want

This company did work for the Department of Defense. Because of that, security protocols were tight.

One day, an employee saw three people walk in to his area. One was a company engineer, two were guests. Only one (the engineer) was wearing eye protection.

The worker stopped what he was doing, and asked the guests to wear eye protection.

What the worker didn't know is that the assistant plant manager saw the exchange.

Afterward, she walked up to the worker and thanked him for what he just did.

This was significant enough to the worker so that he told the story to his co-workers.

The story went viral through the plant and turned out to be what employees often mentioned when I asked why the perception about leadership's support for safety was so strong there.

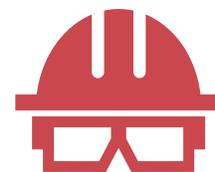
This was a case of simple, positive reinforcement of what the worker had done right.

That's why, when it comes to motivating employees to be safe at work, we have to make sure we're reinforcing what we want.

(Adapted from a presentation by Shawn Galloway, CEO, ProAct Safety, Houston, at the [National Safety Council's 2021 Safety Congress](#))

Real Life Safety

Worker loses leg in machine: Supervisor faces the music



Supervisor Kim Loggins looked over at the baling machine and shook her head.

"We've got way too much cardboard over there that needs to go," she said. "Charlie, can you take care of it?"

"Sure," Charlie said. "I'm used to working that baling machine. But by the looks of it, I'll be baling that cardboard for a week."

"I know," Kim said. "I've never seen that stack so high. But take your time. I don't want any accidents."

"Got it," Charlie said.

Kim headed off to get some work done, and Charlie got to work.

Machine jams, as usual

Charlie grabbed a bunch of cardboard off the pile and fed it into the machine.

After a few loads, he had enough cardboard in there for the baler to compress it into a fat cube.

He pressed the button and stood back, letting the machine do its job.

But suddenly, he heard the machine's gears grind to a halt.

He peered down and saw the cube of cardboard was stuck in the machine.

This thing always jams, he thought.

He pulled one leg back and gave the machine a good kick.

But his foot slid into the baler and just then, the machine kicked back on. Charlie could only howl in pain as the baler crushed his leg.

OSHA eyes lack of LOTO

Charlie lost his leg in the accident. Then OSHA showed up to investigate.

Result: Safety cops found the baling machine should've been locked out and tagged out before the cardboard jam was cleared. OSHA also found Charlie hadn't been properly trained on lockout/tagout, among other safety violations. The company was fined \$73,500.

Key: All the safety training in the world doesn't matter if workers don't follow it! Train your people frequently on lockout/tagout steps – and then make sure they follow the rules.

Based on an injury at Triple P Farms.

HAZARDS

Was her trip and fall really unexplainable?



by Merriell Moyer



As a safety pro, you try to cover angle when it comes to addressing hazards, such as the all too common slip, strip and fall. But what if you dot every “i” and cross every “t” and someone still falls and gets hurt?

Take a Feb. 21, 2022, workers’ compensation decision from the Florida Court of Appeals, for example.

Engineer found no problem with flooring

The case involves a massage therapist who was leaving work at the end of her shift.

She left her massage room carrying her purse and a teacup, walked across a carpeted floor in the

waiting room toward the women’s locker room and fell into the door separating the two rooms.

She was wearing rubber-soled shoes at the time of the incident, and the floor was coated in a slip-resistant material.

Later, she couldn’t recall exactly how the fall occurred.

Her employer hired an engineer to inspect the flooring in the area who found no issues with its surface or configuration.

Comp law covers clumsiness

A workers’ compensation judge denied the therapist’s claim, finding the incident didn’t arise out of

employment because such incidents are only compensable if “the employment necessarily exposed the claimant to conditions that would substantially contribute to the risk of injury to which the claimant would not normally be exposed during her non-employment life.”

In short, such a fall could happen anywhere so the incident couldn’t be considered work-related.

However, the appeals court disagreed and approved the claim, saying that rule only applies where there is a contributing cause outside of employment (such as a work-at-home employee tripping over her dog, which was the example given by the court).

“Clumsiness is covered (by workers’ compensation),” the decision states.

Was her trip and fall really unexplainable?

That's all well and good in the realm of workers' compensation claims, but what about preventing this sort of fall from happening in the first case?

OSHA: Inspect, maintain walking surfaces

OSHA doesn't have a standard for slips, trips and falls. However, the agency addresses such incidents in its walking-working surfaces standard (1910.22).

Basically, that standard says floors and other working surfaces should be inspected regularly and kept free of anything that could cause someone to slip, trip or fall.

That involves checking and correcting things like loose floor boards, leaks causing the surface to become slippery or objects protruding into the pathway.

Following this standard is a good starting point for preventing slips, trips and falls in general, as safety pros know, but the question remains:

How do you address an incident that has no explanation, like the one in the workers' compensation decision?

Was investigation thorough enough?

In this case, the employer brought in an engineer to investigate the floor for defects, but how in depth was the investigation of the incident itself?

If the floor wasn't the problem, something else likely was. Did anyone ask the employee if she was walking faster than normal? Could she have fumbled the teacup enough to cause her to lose balance? Did

the rubber soles of her shoes create friction against the slip-resistant material of the flooring?

There are too many details of the investigation left out of the court's decision to really call this incident unexplained from a safety standpoint.

But if an in-depth investigation really doesn't reveal a cause, then at the very least it's worth mentioning to employees to take their time and walk more carefully to keep further incidents from occurring.



Benchmarking
Contractor Safety
Management with
Maturity Models

FREE REPORT FROM



Benchmarking Your Contractor's Safety

Compliant Contractor Management for Reduced Costs and Increased Wellbeing

Non-fatal workplace injuries result in almost \$60 billion in workers compensation costs every year. That's more than \$1 billion out of employer's pockets for what are often avoidable incidents.

With the popularity and accessibility of contracting workers, contractors account for a large quantity of these injuries and incidents.

Avetta is offering a new whitepaper on the strategies, insights, and tools you need to keep your contracted workers safer.

[get the white paper](#)

Who Got Fined & Why

The bar is always higher when hazardous chemicals are present: \$127K fine

Solvents used to clean parts and machinery can make workers sick through skin contact and inhalation. This company didn't go far enough to minimize methylene chloride risks.

What happened: Sinclair & Rush in Carlstadt, New Jersey, manufactures product protection for plastic components and plastic packaging. It routinely uses methylene chloride, a toxic chemical, as a solvent. An OSHA inspection revealed shortcomings in the company's safety plan.

Result: OSHA cited the company for not providing PPE, eye wash stations, medical surveillance, and engineering controls and work practices that reduce employee chemical exposure. Sinclair & Rush was fined \$127,539.

Staffer's death by electrocution raises red flags

A metals manufacturer didn't evaluate all work practices and equipment that required using de-energization procedures to keep workers safe. One of its employee paid for that mistake with his life.

What happened: What happened: An employee was repairing a portable water heater which hadn't been de-energized first. A shot of current ripped through his body and electrocuted him. OSHA conducted a thorough investigation and wrote up the company, PM Engineered Solutions in Watertown, Connecticut, for 40 serious and eight other-than-serious violations of safety regs.

Result: Top violations uncovered were:

- 62 instances of inadequately guarded machinery, including mechanical power presses, forges, hydraulic presses and grinding machinery
- Numerous electrical safety violations, including exposed live electrical parts, uncovered electrical boxes, flexible cords used in lieu of permanent wiring and material stored in front of electrical panels
- Open or unlabeled tanks and containers of hazardous chemicals
- Missing or inadequate lockout/tagout procedures

Total fine: \$236,201.

Real Life Safety

Why was veteran staffer up on top of pallet stacks? Fatal fall triggers \$389K fine



Veteran, long-time employees bring a lot of good qualities to the table. They're loyal ... they know how things run in your operations on a day-to-day basis ... they're typically more motivated than newer people ... and they can impart a ton of knowledge and good work habits to the rest of your crew.

All those qualities can lead Supervisors to take more of a hands-off approach with "vets." Especially when it comes to safety. Some veterans may underestimate risks and overestimate their physical capabilities if they've never suffered a serious injury.

Here's a case illustrating why even your longest-serving staffers deserve a careful eye and may need a reminder about safety from time to time.

Showing new worker the ropes

"Hey Dale! Dale!!" yelled Frank, the mill foreman. Frank waved his arms to grab the attention of Dale Schurmer, the veteran carpenter and all-around "done it all" employee.

Dale put one finger to indicate he needed a minute to finish sawing wood.

"I'll have Dale show you around," said Frank. "He's been with our company longer than anyone. Refuses to retire!"

"Yeah," said Jamal, a new employee who'd just started. "He's old enough to be my grandpa."

"Don't let him hear you say that!" Frank laughed. "Trust me, that 'old man' has more energy than some guys half his age.

"I don't know where he gets his energy," said Frank, shaking his head.

Dale strolled over and extended his hand to Jamal for a handshake. "Welcome aboard," said Dale.

"Thanks for getting Jamal here started," said Frank. "I want him to learn from the best."

"Well I may be the oldest one around here, not sure if I'm the best!" laughed Dale.

"I can find work for Jamal to do after lunch, so you don't get too far off schedule," said Frank.

"I appreciate that," said Dale. "Let's get started."

"Sounds good," said Jamal.

Always work to be done

"This is our main band saw," said Dale. "I'm guessing you worked on one of these in high school shop?"

"Yes sir," said Dale. "Well to be accurate, my grandpa has one in his work shed. I've used his plenty."

Continued on next page

Real Life Safety

"That's good," said Dale. "Hell! I'd let you work on the sucker now, but you've got to go through our safety program first. Frank might actually have to fire me if I let you fire that machine up."

"Yep, safety first," said Jamal.

"So let's see," said Dale. "Oh right, time to whittle down that pile over there." Dale pointed to stacks of pallets about 10 or more high.

"Most of those pallets are salvageable, but a few in the middle are ruined," said Dale.

"Huh. Why's that?" asked Jamal.

"Roof leak," said Dale. "Needs to be fixed. This place is almost as old as me, as you can see. But money's tight to upgrade everything we'd like to.

"Do me a favor and grab that ladder over there," said Dale. "I want to climb up on top of the stacks."

Jamal did as he was told.

Not the first time, but it was the last

Dale slowly climbed the ladder up and shuffled on top of the pile. "My guess is the top ones took the worst of the water but most of the ones underneath are keepers," said Dale.

"Come on up, not a bad view of the mill from up here," Dale laughed.

Jamal climbed the ladder but hesitated to stand with his full weight on the wood. "You sure this will hold us?" Jamal asked.

"What's that?" Dale asked. "Oh sure! A stack like this could hold two tons. Trust me, I know."

Dale took a closer look for black rot on any of the pallets. Deep in thought, he walked near the stack's edge and the wood cracked under him.

"Whoa!!" Dale yelled. He couldn't regain his balance and fell to the floor. Dale died from his injuries.

Lucky to avoid accident for so long?

OSHA inspectors found a wide range of safety violations besides the obvious lack of fall protection directly related to the employee's death.

For starters, it failed to report the fatality within an eight-hour window. Other citations included:

lack of fall protection equipment or guardrails for work typically done four feet or higher off the ground

failing to use energy control procedures (a lockout/tagout program)

no PPE or engineering controls to protect workers' hearing at multiple work stations, and

a lack of guards on powered saws to prevent amputations or a worker being pulled into a machine.

The OSHA citations added up to \$389,000. The company also faces a lawsuit brought by the deceased worker's family.

(This case has been dramatized for effect. Based on an OSHA penalty against W.D. Townley and Son Lumber Company.)

LEGAL

Safety concerns not enough to dismiss disability lawsuit

 by Merriell Moyer



EMPLOYER DENIED JOB TO WORKER USING OPIOID PAIN MEDS

Safety|NewsAlert

If a potential employee uses prescription drugs that could impact their own or another employee's safety, it may seem like denying employment would be in everyone's best interests. However, it's not always that simple.

For example, the U.S. District Court for the Southern District of Ohio recently found it couldn't simply dismiss a lawsuit filed by a forklift operator who was denied a job because of his prescription opioid use.

The court found there were issues of fact regarding whether the employer actively participated in the interactive process to accommodate a disability and whether the forklift operator's opioid use made it unsafe for him to do the job.

So the court couldn't offer summary judgment for either party, finding there were triable issues of fact that had to be resolved before the case could be decided.

Three doctor's notes weren't enough

Forklift operator Raymond Hartmann takes prescription opioid medication for persistent pain.

He applied for a position at Graham Packaging Company as a forklift operator and told his prospective employer about his medication during the interview process.

Graham asked Hartmann to provide a doctor's note confirming that the medication wouldn't create safety

Safety concerns not enough to dismiss disability lawsuit

concerns while he was performing his job duties.

Hartmann returned with notes from his doctor on three separate occasions, and he passed a pre-employment drug screening, although his test results were labeled as safety-sensitive.

Graham found each doctor's note was too vague on the issue and declined to offer Hartmann the job based on safety concerns.

Too many questions left unanswered

In response, Hartmann sued the company under the Americans with Disabilities Act (ADA), claiming Graham discriminated against him because of his disability.

In court, Graham argued it wasn't aware of Hartmann's disability but was only aware of the medications he used.

However, the negative side effects of the medication were enough to constitute an impairment for the purposes of the ADA. Graham's failure to hire Hartmann for its belief his medication would make him unable to operate a forklift safely was enough to prove he was disabled for a "regarded as" claim, according to law firm Jackson Lewis.

On the other hand, the court found there were issues of fact regarding Hartmann's ability to perform his job duties safely since it was unclear if the company conducted an "individualized inquiry" to check Hartmann's abilities.

The company's motivations regarding the doctor's notes were also vague as "it was unclear whether the employer asked for a more specific doctor's note which the applicant failed to provide, or whether the employer failed to specify exactly what it needed the applicant to provide in terms of medical documentation."

With so many questions left unanswered, the court refused summary judgment for either side.

Safety|NewsAlert

10 ways to create a better safety culture

SAFETY CULTURE

ESSENTIAL
INSIGHTS

10 Ways To Create A Better Safety Culture

Get greater buy-in for safety at all levels

Creating a zero-injury workplace is about the people – not the gear. Taking a "rules and tools" approach won't cut it when your standards are higher than just satisfactory. That's because with "satisfactory" safety programs people consistently get hurt – or worse. It's a challenge.

This Essential Insights gives you concrete steps you can take immediately to gain buy-in for a no-tolerance-for-accidents safety culture, develop safety leaders, get management and front-line workers thinking safety first, measure your success – and keep everyone safer and happier.

[get the guide](#)

OSHA

Employer in fatal trench collapse cited once again

 by Merriell Moyer



Employer who was cited by OSHA for a trench-related double fatality in downtown Boston in February 2021 is now facing a \$624,000 fine for new violations.

Laurence Moloney and his companies – Atlantic Coast Utilities, Advanced Utilities, Nuala Nichoncubhair and Sterling Excavation – were recently cited by OSHA for failing to provide employees with cave-in protection at an East Boston residential construction site.

Moloney had been cited six months prior to the current inspection for egregious willful violations related to the cave-in that claimed the lives of two employees at the downtown Boston worksite.

20-year history of trench violations

He was fined \$1,350,884 for 28 violations following the fatal trench

collapse. Moloney is currently contesting those citations in court.

Moloney and his companies have a 20-year history of OSHA trenching and excavation violations with six previous inspections of his companies resulting in 14 willful, repeat and serious violations.

Those citations resulted in \$81,242 in penalties, with \$73,542 of that total being unpaid and referred to debt collection.

“While Laurence Moloney may reincorporate and operate under a variety of names, what is consistent is his pattern of willfully violating safety and health requirements, ignoring OSHA citations and penalties and persistently placing employees in harm’s way,” OSHA Regional Administrator Galen Blanton said in a news release.

New citations similar to those of fatal incident

In August 2021, inspectors responded to a complaint regarding workers exposed to trenching hazards while working on the foundation of a residential structure.

Inspectors found Moloney and his companies failed to:

- ensure cave-in protection for employees working in an excavation
- provide adequate protection to prevent loose rock or soil from falling into the excavation
- instruct employees in the recognition and avoidance of unsafe conditions
- conduct frequent and regular inspections to identify and correct hazards
- ensure stability of adjoining buildings, walls or other structures endangered by excavation operations
- ensure that a competent person identified all confined spaces employees were to enter, and
- provide adequate helmets to protect employees against impact from falling objects.

The investigation led to four willful and three serious violations for Moloney and his companies, with proposed penalties totaling \$624,777.

What Would You Do?

Is worker's safety shortcut efficient or major hazard?



Manager Mike Kelly was working on an important budget presentation he had to give to Corporate in a few days.

"Budget reports were never my cup of tea," Mike grumbled.

"What did you say, Mike?" forklift operator Ezra Kirby asked.

"Sorry, Ezra. I was just talking to myself and didn't notice you there," Mike explained. "Is there something I can help you with?"

'Trying to work more efficiently'

"Well, you see, some of the guys on the shipping dock are trying to work more efficiently," said Ezra. "They're taking a shortcut to do the job faster."

"I see," said Mike. "What are they doing, specifically?"

"You know how we have that garage door that leads out onto the open dock?" Ezra asked. "In the winter, we only open that door for a moment when we have to drive out onto the dock.

"We've been using that door more frequently this winter, though, so the guys have started driving up next to the control panel, leaning out and tapping the button without getting off their forklifts," Ezra explained.

"Honestly, I tried it once myself but you have to lean out pretty far and it felt like I was either going to fall – I had to unbuckle my seat belt, too – or get crushed against the wall," he added.

If you were Mike, what would you do in this situation?

It could work under the right conditions

Some companies might not see a danger in this kind of shortcut if it doesn't put the worker or company property in danger.

For example, if a forklift operator can safely drive up to the control panel and press the button without having to reach outside of the forklift's cab or become exposed to a crushing hazard against a wall or another object, then maybe it could work.

Of course, a hazard analysis would have to be performed and there would have to be some rules, such as, "You must come to a complete stop before pressing the button."

Stop doing it, for now

However, it's far more likely in this scenario that Mike is dealing with an unsafe situation in which a forklift operator could either be crushed between the lift and a wall or fall off the lift while reaching out to press the button.

Obviously, a forklift operator removing their seatbelt to lean way out of their lift to press a button is not a safe situation, so Mike should put a stop to it for the short term at least, until a better solution can be found.

And while this is something engineering controls may be able to rectify – moving the control panel to a safer location, for example – it would also require an assessment of whether the new location presented new hazards and would such a move be worthwhile in the long run.

Investigators: Fatality was caused by shortcutting procedures

Safety pros know that this sort of shortcut is typically an incident waiting to happen, yet employees, and even supervisors, don't always see the danger in it.

But there can be deadly consequences in attempting to

lean out of an industrial vehicle to manipulate a control panel or shove a gate aside, as investigators with the National Transportation Safety Board (NTSB) recently pointed out.

The investigators were sent to an Illinois railyard to look into the events leading to the death of a Decatur & Eastern Illinois Railroad train conductor.

On Nov. 11, 2020, the conductor was killed while he and two other workers were adding railcars to a train.

The conductor was on a slow-moving train car when he came upon a gate that had opened and was blocking a portion of the track.

Instead of following safety protocols calling for him to stop and dismount to close the gate, he climbed onto the car's ladder – which is meant to be used to climb onto, and descend from, the car – and grabbed the gate.

As he took hold of the gate, he was pulled off the ladder and onto the track where he was struck by the train engine pushing the car.

Conductor was 'visibly angry, increased work pace'

Investigators found no other contributing factors for the incident and a toxicological test revealed there were no drugs in the conductor's bloodstream.

The two other workers who were helping add the railcars when the incident occurred mentioned the conductor became "visibly angry and increased the pace of his work" when they were all assigned to the task, which would cause them to end their shift later than normal.

During interviews with investigators, other witnesses shared that the conductor had a history of becoming angry when plans changed, which may have factored into his decision to shortcut safety protocols.

Sharpen Your Judgment

Was worker's allergic reaction work-related?



"I wonder which forklift is responsible for this," Safety Manager Pete Travers said as he found yet another tiny, but still hazardous, spot of oil on the warehouse floor.

He placed a small amount of an oil absorbent material on the spot and followed the instructions in cleaning it up and making sure the oil was gone.

"We can't have anyone slipping on these," said Pete as he finished up and removed one of the bright orange hazard pylons he'd placed near all the oil spots he'd found.

Pete began moving his clean-up operation toward the next spot when he saw company attorney John Jenkins charging toward him at a fast-paced walk.

"Pete, can we please talk about this workers' comp claim?" asked John, who wasn't looking where he was going.

"John, look out for that pylon!" Pete shouted too late as John stumbled over the pylon.

Thankfully, he didn't fall.

"Haven't I told you before you need to pay attention when you come out here?" Pete gently scolded while approaching the attorney, who was clearly shaken.

'She got a bad rash almost instantly'

After checking to make sure John was OK – the only thing hurt was his pride – they went to Pete's office to discuss the workers' compensation claim.

"So what's with this claim?" John asked. "Someone got a rash from a uniform, is that right?"

"Yeah, our security staff recently received new uniforms," said Pete. "Kate Simmons put on the new uniform and got a bad rash almost instantly.

"She's never had allergies before, but something with that uniform caused her skin to break out in a red, itchy rash, made her eyes burn and gave her a bad cough," Pete explained.

"And she's sure this was caused by the new uniforms?" John asked.

"From what I understand, she tried to tough it out and continued to wear them, but it made her condition worsen," said Pete.

"I think we can fight this," John said. "I'm sure her allergy can't be considered work-related."

Pete's company fought the claim. Did it win?

Decision on next page

Sharpen Your Judgement

Was worker's allergic reaction work-related? *Continued*



The decision

No, Pete's company lost when an appeals court found the employee's condition was indeed work-related.

The worker claimed that prior to her wearing the new uniforms she had never experienced allergies of any kind before. But upon wearing the uniform, she experienced skin rashes, burning eyes, coughing, runny nose, tightness in her chest, difficulty breathing, heart palpitations and headaches.

With continued use of the new uniforms, her condition worsened. Even after she was allowed to stop wearing them, her symptoms persisted simply from being around her co-workers who were able to wear the new uniforms.

The worker's doctor testified that the employee's medical history verified she was never treated for allergies until she was exposed to the chemicals in the new uniforms. Another medical expert testified that

he'd been treating other workers at different facilities for the same symptoms caused by these uniforms.

Further, after being away from work, and the uniforms, for almost a month, the worker's symptoms had disappeared.

So the court found that "substantial evidence in the record supports" the worker's claim that her allergy was a compensable, work-related illness.

Analysis: Workers who are sensitive to chemicals

Safety Pros can be presented with some strange and unexpected problems sometimes and workers with sensitivities to certain chemicals can fall under that umbrella.

Everybody has different levels of sensitivity to a given chemical or substance and one worker's reaction to something like an odor in their work area could be vastly more severe than another's.

That's why Safety Pros know it's important to investigate a situation where even one worker is complaining of having some kind of reaction to a chemical in their work area.

In some situations, like with the odor example, a simple fix like opening a window or door for better ventilation could alleviate the situation. And, of course, depending on the severity of the situation and number of employees affected, a more thorough analysis and response would be required.

Based on: Sec. of Labor v. ComTran Group

Real Life Safety

Got chemicals? Check these 6 fixable areas before inspectors do!



Chemical storage and distribution facilities are paying hefty fines these days – so much so, that the feds put out an enforcement alert to warn other regulated sites.

The good news? Many of the problems inspectors found don't cost a lot of money or time to fix.

Don't say we didn't warn you!

Recent inspections of “companies that process, formulate, blend, repackage, store, transport and market chemical products ... [aren't] developing safety precautions; instituting maintenance, monitoring and employee training measures; and preparing” risk management plans (RMPs) or process safety management plans.

Here are the most common problems inspectors from OSHA, EPA and the Department of Homeland Security find over and over again that chemical storage sites want to avoid:

Sooner they're fixed, the better

- Many sites don't account for the chemicals in all containers that could be affected by the same emergency event, such as a fire.
- Records show “mistaken weight calculations for flammable mixtures.”
- Workers lack clear information on how to avoid storing incompatible chemicals near each other. Better signage as well as barriers and physical markings can do the trick.
- Outdated or inoperative fire sprinkler systems and alarms aren't flagged and fixed.
- Facilities don't let the local emergency planning committee and fire department know about chemical inventory and building changes in a timely manner.
- OSHA's PSM rule varies from the EPA's RMP reg in a few ways. For example: Hydrofluoric acid isn't on the PSM list but is an RMP chemical. You may need to cross-check for compliance.

Safety Quiz

What to look for when selecting work gloves



There's almost no job a worker can do without the use of their hands in some way. So it's little wonder that gloves play an important part in any PPE arsenal.

Do your workers know the best way to protect their hands on the job?

Test your knowledge.

Decide whether the following statements are True or False.

check answers on the next page

- 1 TRUE OR FALSE:** Latex gloves are comfortable, elastic and temperature-resistant, making them a good choice for all employees.
- 2 TRUE OR FALSE:** Gloves should be visually inspected before each use.
- 3 TRUE OR FALSE:** Cotton and other fabric gloves provide protection against heat, chemicals and sharp objects.
- 4 TRUE OR FALSE:** Each kind of glove has its own special properties, but most provide appropriate protection for any job you'll be called on to do.

Go to the following page to see if you are correct.



Safety Quiz



- 1 FALSE:** While latex gloves do provide all these benefits and are generally considered a good general-purpose glove, some people are allergic to latex. Hypoallergenic gloves could be a better option for those workers.
- 2 TRUE:** In addition to looking for visible tears or holes, you may want to also do a test on waterproof gloves. Fill the glove with water and roll the cuff toward the fingers to see if there are any pinhole leaks.
- 3 FALSE:** Fabric gloves protect against dirt, chafing and abrasions. They don't protect the hands when using sharp or hot materials.
- 4 FALSE:** There are a wide variety of gloves because there are many jobs that require hand protection. Check the manufacturer's instructions and your company's PPE requirements to make sure you're using the right one.



about ^{News & Training} SafetyAlert

Safety News & Training Alert, part of the *SuccessFuel* Network, provides the latest Safety and employment law news for Safety professionals in the trenches of small-to-medium-sized businesses. Rather than simply regurgitating the day's headlines,

Safety News Alert delivers actionable insights, helping Safety execs understand what Safety trends mean to their business.

But we don't stop there.

Our editors read and vet hundreds of sources and hand-select the most relevant, practical content. Then we add our seasoned perspective and deliver actionable insights to help you understand what today's trends mean for your business.

Meet Our Editors



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Merriell researches and writes about occupational health and safety. He was an investigative and breaking news reporter for the Lebanon Daily News - part of the USA Today Network.



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Scott Ball is the Senior Staff Writer for Safety News and Training Alert with more than 20 years of experience writing for working professionals. He served as editor-in-chief for the trade publications: Facility Manager's Alert, Environmental Compliance Alert and Supervisors Safety Bulletin.

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