



Wiring a green tomorrow



Joint Safety Committee
Oregon Pacific-Cascade Chapter, NECA
IBEW Local 932
Wednesday November 29, 2023
Meeting AGENDA

Roll call: meeting called to order, In-Person and Zoom
Approval of previous Meeting Minutes

1.0 Communications

- 1.1 Please let me know if you have any needs I can help with and
- 1.2 Do we have any near misses or recordables?

2.0 New Business- (safety packets distributed)

- 2.1 Top 10 list of Injuries and Falls
- 2.2 Excerpt for packets distributed

3.0 OSHA Injury/Incidents (July-December)

Recordable

- 3.1
- 3.2
- 3.3

First Aid/Near-miss

- 3.4
- 3.5

4.0 Class Schedule- Posted online

All NECA Contractors are reminded that work related accidents and incidents should be reported via the Accident/ Incident report to the NECA office for consideration by the committee. If you need a copy of the report, contact the Chapter office.

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

Next Meeting: January 24th, 2024



POWERFUL TRADITION ELECTRIFYING FUTURE
OREGON PACIFIC-CASCADE CHAPTER

Safety Meeting Packet

November 2023

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**2023 LABOR HOURS RECAP
ALL SIGNATORY CONTRACTORS**

Local#	Contract Type	Annual Total	Average Hrs/Mo	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
280	Inside	894,343	8	111,793	103,945	111,251	122,872	113,682	104,669	127,371	94,109	116,444				
280	Inside Appr.	292,287	8	36,536	33,080	36,178	41,949	39,430	34,323	42,315	29,202	35,810				
280	MAI	0	8	0	0	0	0	0	0	0	0	0				
280	Material	79,686	8	9,961	11,230	10,956	11,319	10,906	9,145	9,254	8,711	8,165				
280	Residential	69,033	8	8,629	7,215	8,641	9,630	7,955	8,324	10,667	7,218	9,383				
280	Resi. Appr.	44,436	8	5,555	4,753	5,536	6,370	4,780	5,597	7,155	4,396	5,849				
280	S & C	160,355	8	20,044	17,028	18,882	23,246	19,379	19,893	22,944	17,975	21,008				
280	S & C Appr.	52,610	8	6,576	4,879	5,741	7,610	6,606	6,317	7,806	6,256	7,395				
280	Support Tech/MOU	141,392	8	17,674	17,393	23,084	23,217	17,512	15,932	17,087	13,891	13,276				
	TOTAL 280	1,734,142	8	216,768	199,523	220,269	246,213	220,250	204,200	244,599	181,758	217,330	0	0	0	0
	Total NECA	1,559,009	8	194,876	180,657	197,877	223,078	202,674	182,267	220,111	159,647	192,698	0	0	0	0
	% NECA	89.90%		90.54%	89.83%	90.60%	92.02%	89.26%	89.99%	87.83%	88.67%	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	
Local#	Contract Type	Annual Total	Average Hrs/Mo	Jan	Feb	March	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
659	Inside	189,844	8	23,731	18,216	22,795	28,225	23,379	23,263	27,100	22,988	23,878				
659	Inside Appr.	90,886	8	11,361	9,251	11,148	14,290	11,477	10,362	12,357	10,493	11,508				
659	Material	4,729	8	591	930	846	772	556	511	361	321	432				
659	Residential	5,525	8	691	634	756	929	609	652	793	502	650				
659	Resi. Appr.	2,338	8	292	287	413	228	229	303	302	264	312				
659	S & C	8,272	8	1,034	953	1,033	1,139	999	1,144	1,229	836	939				
659	S & C Appr.	2,357	8	295	228	315	358	289	306	407	300	154				
	Total 659	303,951	8	37,994	30,499	37,306	45,941	37,538	36,541	42,549	35,704	37,873	0	0	0	0
	Total NECA	250,052	8	31,257	24,825	30,539	37,842	31,042	29,928	35,556	29,498	30,822	0	0	0	0
	% NECA	82%		81%	82%	82%	83%	82%	84%	83%	81%	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	
Local#	Contract Type	Annual Total	Average Hrs/Mo	Jan	Feb	March	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
932	Inside	79,005	8	9,876	8,218	9,082	9,687	10,250	10,240	10,277	10,229	11,022				
932	Inside Appr.	36,255	8	4,532	3,957	4,342	4,655	5,178	4,842	4,652	4,533	4,096				
932	Residential	913	8	114	114	108	31	119	152	160	103	126				
932	Resi. Appr.	1,584	8	198	0	0	79	151	168	318	349	519				
932	S & C	3,744	8	468	486	393	558	514	435	586	310	462				
932	S & C Appr.	120	8	15	0	0	0	35	0	45	40	0				
	Total 932	121,621	8	15,203	12,775	13,925	15,010	16,247	15,837	16,038	15,564	16,225	0	0	0	0
	Total NECA	93,849	8	11,731	10,320	11,135	11,436	12,829	12,341	11,988	11,933	11,867	0	0	0	0
	% NECA	77%		81%	80%	76%	79%	78%	75%	77%	73%	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	
	Grand Total	2,159,714	8	269,964	242,797	271,500	307,164	274,035	256,578	303,186	233,026	271,428	0	0	0	0
	Total NECA	1,902,910	8	237,864	215,802	239,551	272,356	246,545	224,536	267,655	201,078	235,387	0	0	0	0
	% NECA	88%		89%	88%	89%	90%	88%	88%	86%	87%	#DIV/0!	#DIV/0!	#DIV/0!	#DIV/0!	



Safety Training Topics

December 2023

Working in Cold Weather

Hypothermia

Frostbite: Signs & Symptoms

First Aid: Frostbite

SAFETY TRAINING TOPIC

Working in Cold Weather

December marks the official start of the winter season, which means you are far more likely to be exposed to extreme cold temperatures. It is imperative that you understand the risks associated with prolonged exposure to cold weather and how to best protect yourself from the dangers that come with it.

If you work in cold or cool temperatures there is an increased that you will experience trench foot, hypothermia and frostbite. You should be aware that people who are in poor physical condition or have medical conditions such as hypertension, hypothyroidism and diabetes are at greater risk when working in cold weather.

Before conducting outdoor work in cold temperatures you should be trained in the safety precautions that go along with it. When work needs to be done in these conditions, plan to do so at the warmest part of the day. It can also helpful to work in pairs. This will better allow you monitor each other for symptoms of cold stress.

When working in the cold you need to stay dry. Moisture or dampness caused by sweat, snow or rain can increase the rate of heat loss from your body. You should carry an extra set of dry clothes when working in winter conditions avoid tight clothing because it reduces blood flow to your extremities and can result in more rapid heat loss.

OSHA recommends wearing multiple layers to provide better insulation and to help adjust to changing temperatures. Typically, an inner layer of wool, silk or synthetic (polypropylene) to keep moisture away from your body; a middle layer of wool or synthetic to provide insulation even when wet; and an outer wind and rain protection layer that allows some ventilation to prevent overheating. You might also consider wearing a knit hat along with insulated water proof boots and gloves. Remember if working with electricity Arc-Rated (AR) clothing may be needed. Some of the materials mentioned above may not be appropriate. Your supervisor should check with a supplier for cold weather garments and under garments that provide dual protection.

In addition to taking these precautions, your employer should provide a warm dry place for you to take breaks from freezing temperatures, as you can experience exhaustion and fatigue in cold weather at a more rapid rate than usual. Drinking warm beverages and sports drinks, avoiding caffeine and alcohol also help. Finally, you should consider eating warm high calorie foods such as pasta, prior to working in cold environments.

REVIEW AND DISCUSSION

- When should work be scheduled if necessary in cold environments?
- Why should you avoid wearing tight clothing when working in cold weather?
- What are some types of clothing that OSHA recommends wearing in cold weather?

SAFETY TRAINING TOPIC

Hypothermia

When working outdoors in cold or cool conditions, you are at risk for hypothermia. What is hypothermia? Hypothermia occurs when your body heat is lost faster than it can be replaced. Then your body temperature drops below 95°F. It most commonly occurs when exposed to extreme cold temperatures. However it can also occur in warmer conditions if you are chilled from rain, sweat or submersed in cold water.

Here are some indicators or symptoms that you or a colleague might be hypothermic. Mild symptoms include increased alertness, shivering and stomping of your feet to help generate heat. As your body temperature drops your condition will worsen and shivering will stop.

More moderate and severe symptoms may include dilated pupils, confusion, disorientation, impaired motor skills, slowed breathing and heart rate, difficulty standing and even unconsciousness. If you experience or observe any of these symptoms, it is important to get help immediately. You could die from hypothermia, if you don't seek immediate medical attention!

While waiting for help you should move yourself or your colleague to a warm, dry area. Then take off any wet clothes, replacing them with dry ones. The body should also be covered with layers of blankets, leaving a vapor barrier to help retain body heat. This can be done with garbage bags or tarps. However be careful to never cover the face.

If emergency responders are more than 30 minutes away, drink or offer warm sweet drinks to help increase body temperature. Never try to give a drink to an unconscious person. You may also place warm bottles or hot packs in armpits, sides of chest and /or groin areas.

In the event a hypothermia victim is not breathing or has no pulse, you may attempt to administer cardiopulmonary resuscitation (CPR) if you are comfortable and trained to do so.

REVIEW AND DISCUSSION

- What is hypothermia?
- What are some moderate to severe symptoms of hypothermia?
- Why is it important to leave a vapor barrier when warming up a hypothermia victim?
- When is it ok to give a drink to an unconscious person?

SAFETY TRAINING TOPIC

Frostbite: Signs & Symptoms

Frostbite is another ailment that you may encounter when working in cold weather. It is an injury that happens when your skin and underlying tissues freeze. Typically the colder the temperature, the shorter the length time it takes for frostbite to occur. It usually affects your fingers, toes, nose, ears, cheeks and chin.

You are most vulnerable to frostbite when your bare skin is exposed to cold, windy weather. However it can also be caused by direct contact with ice, freezing metals or very cold liquids.

The first stage of frostbite is known as frostnip. This is the mildest form of frostbite. At this stage your skin may turn pale or red and feels very cold to the touch. It may also result in prickling and numbness. Once your skin warms up, you may feel pain and tingling. However you won't experience permanent damage.

The second stage of frostbite occurs with more prolonged exposure to cold. When this occurs your skin may remain soft, but ice crystals can form in the tissue. According to the Mayo Clinic, your skin may begin to feel warm — a sign of serious skin involvement. If you treat frostbite with rewarming at this stage, the surface of your skin may appear mottled, blue or purple. And you may notice stinging, burning and swelling. A fluid-filled blister may appear 24 to 36 hours after rewarming the skin.

In severe cases you can experience numbness, pain or discomfort in the affected area. Your joints and muscles may not work at this point. Once the skin is re-warmed the area might turn black and hard as the tissue dies. This can result in amputation.

You may be a greater risk for experiencing frostbite if you have a history of substance or tobacco use, poor blood flow, diabetes, mental illness or previous frostbite or cold injury. Additionally higher altitudes, exhaustion and dehydration can accelerate the onset of frostbite.

If you experience any form of frostbite, seek medical attention. All stages require some type of treatment.

REVIEW AND DISCUSSION

- What part of the body does frostbite usually affect?
- What causes frostbite?
- What is the mildest form of frostbite?
- What are some factors that can put you at greater risk of experiencing frostbite?

SAFETY TRAINING TOPIC

First Aid: Frostbite

If you experience frostbite, you need to seek prompt medical attention. If your skin is turning hard or black or you have lost feeling in the affected area call 9-1-1 immediately

Whether you are afflicted with a severe or mild case of frostbite, the first thing that you need to do is restore warmth to the skin. Until you can see a doctor, you should go to a warm, dry area and remove all wet clothing. However do not attempt to re-warm skin unless you can keep it warm. Re-exposing warm frostbitten areas to cold air can cause worse damage.

When re-warming the skin do not use direct heat from heaters, fireplaces or heating pads. You may use warm, NOT HOT, water to help do so. If no water is available you can attempt to breathe on the area or hold it close to the skin. Never rub the area or break any blisters that may have formed. Unless absolutely necessary, do not attempt to walk on feet or toes that have frostbite.

Once your skin is warm again, you should bandage the area. You can do so by applying loose, dry and sterile dressing. If the frostbite has occurred on your fingers or toes, use gauze or clean cotton balls between each to keep them separated.

After receiving medical attention, your next courses of action will vary on a case-by-case basis. Some cases require being in the hospital for an extended time. Other times you may be offered medication for pain or even intravenous fluids if you are dehydrated. More often than not you will also be given a tetanus shot.

You should also return to the doctor if you exhibit fever, new symptoms, increased pain, swelling, redness or discharge in the area that was frostbitten. Once you have experienced frostbite you may encounter the following complications:

- Increased sensitivity to cold
- Increased risk of developing frostbite again
- Long-term numbness in the affected area
- Changes in the cartilage between the joints (frostbite arthritis)
- Infection, gangrene or amputation

REVIEW AND DISCUSSION

- How should you re-warm areas afflicted with frostbite?
- When should you return to a health care provider after being treated for frostbite?

News & Training SafetyAlert

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November 2023

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Great safety programs are built on established rules, educated workers and consistent enforcement

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
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News Briefs

Safety Stories You Might Have Missed

2 maritime incidents involving maneuvers at excessive speeds are good lessons for operators

The investigation of two maritime incidents caused by excessive speed during maneuvers led the National Transportation Safety Board (NTSB) to encourage tugboat operators to set speed limits.

While the incidents that led to the NTSB's request involved tugboats, any industry that uses powered industrial trucks could also benefit from ensuring that operators slow down while maneuvering.

'Risk increases with increasing speed'

The first incident occurred on April 14, 2022 when the tugboat George M and containership MSC Aquarius collided in the Houston Ship Channel approaching Morgan's Point, Texas. The tugboat was attempting a harbor-assist maneuver at a speed that was too fast for conditions, resulting in the collision. No injuries were reported, but about 1,000 gallons of oil were released into the environment. Damage to the George M was estimated at \$750,000, while damage to the MSC Aquarius was \$183,665.

A similar incident occurred on Aug. 7, 2022, when the tugboat CC Portland grounded outside the Corpus Christi Ship Channel. The tugboat crew was attempting to secure a tow line onto the bow of an inbound liquefied natural gas (LNG) carrier. Investigators determined the probable cause was the mate's attempt to go bow-to-bow with the LNG carrier while both vessels were traveling at a speed that was excessive for the advanced harbor-assist maneuver. No injuries were reported. The grounding resulted in \$1.3 million in damages to the CC Portland.

Slow and steady best choice with industrial equipment

In other industries, operators maneuvering equipment at high speeds can lead to incidents that could cause property damage, worker injuries and even death.

For example, if a forklift operator is maneuvering toward a warehouse rack to pull a pallet from a high shelf, excessive speeds could cause the forklift to tip over. That could potentially injure or kill the operator and any other workers in the area. At the very least, it could damage the forklift, racks and product.

[Read the story online](#) 

Appeals court: COVID-19 is compensable if workers' comp legal requirements are met

Is a COVID-19-related death compensable under workers' compensation law? The Arizona Court of Appeals ruled that it can be as long as the legal requirements of compensability are met.

The court's decision in a case involving a worker who died from COVID-19 due to exposure at work affirmed an administrative law judge's ruling that granted workers' compensation benefits to the widow.

Employees continued to work in office during pandemic

In October 2020, Kenneth Zerby was working as a design engineer for Western Millwork. He typically worked four or five days a week in Western's offices.

When the COVID-19 pandemic began, Western kept its employees working in the office and established safety guidelines based on guidance from the U.S. Centers for Disease Control and Prevention.

Worker took precautions because of prior medical issues

Zerby, like many of his co-workers, typically kept his office door closed while working. He felt he was at a heightened risk and was nervous about contracting COVID-19 because of a prior kidney transplant and being diagnosed as pre-diabetic. For these reasons, Zerby took precautions by wearing a mask, social distancing and limiting the amount of time he spent in public.

On Oct. 7, 2020, Zerby underwent a regular medical examination and was deemed to be in good health. He drove to Colorado by himself on Oct. 9, 2020, and spent the night at a hotel so he could unlock a storage unit for movers. He was still healthy when he returned home.

From Oct. 12 through Oct. 14, 2020, Zerby returned to work. He took time off on the following two days to move into a new residence. His wife directed the movers while he observed from a safe distance.

Exposed to sick co-workers inside and outside of workplace

While Zerby was working on Oct. 12, 2020, a co-worker who was visibly ill went to Zerby's office and had a conversation with him. The co-worker was out

sick for a few days following the conversation and returned to work before receiving the results of a COVID-19 test. The co-worker eventually received a positive result and informed Western.

On Oct. 17, 2020, Zerby's supervisor and the supervisor's wife and brother stopped by to visit Zerby and his wife at their new home. Later the same day, Zerby and his wife had dinner outside at a restaurant with another co-worker, who tested positive for COVID-19 one week later.

Zerby woke up on the night of Oct. 18, 2020, with a fever. He felt well enough to go to work the next morning. That's when he learned that the co-worker he'd spoken to in his office had COVID-19. Zerby took a COVID-19 test the next day, which came back positive. His condition deteriorated rapidly, and he was hospitalized on Oct. 27, 2020. He died about two weeks later.

Judge rules worker's COVID-19-related death compensable

After his death, Zerby's wife filed a workers' compensation claim, alleging that her husband contracted COVID-19 from a co-worker while at work. Western and its insurer, Cincinnati Insurance Company, denied the claim.

At a hearing in front of an administrative law judge, medical experts for both parties argued over the characteristics of COVID-19 and the likelihood of Zerby's exposure at work.

The judge found in the wife's favor, "determining that Zerby contracted COVID-19 in the course and scope of his employment leading to his death."

Court: COVID-19 can constitute 'accident' under comp law

On review with the Arizona Court of Appeals, Western argued that COVID-19 should be treated like valley fever – a respiratory disease caused by fungal spores so common they can't be accurately traced. Because it is so difficult to trace, valley fever isn't covered under workers' compensation laws.

The appeals court disagreed, finding that "COVID-19 – like pneumonia, Lyme disease, allergies, and hepatitis – can constitute an 'accident' under the workers' compensation statute, even if COVID-19 does not qualify as an occupational disease."

That led the court to rule that death or injury from COVID-19 is compensable if the statutory requirements for establishing workers' compensation are met.

[Read the story online](#) 

New OSHA initiative addresses silica dust in engineered stone fabrication industry

Federal OSHA launched a new initiative to protect workers in the engineered stone fabrication industry who are exposed to excessive levels of silica dust.

Workers in the industry are being diagnosed with irreversible lung disease from silica dust exposure because many manufacturers in the U.S. are out of compliance with related standards, according to experts.

Doctors and research scientists have been warning about the greater hazard the industry presents to workers' lungs, but the federal government and individual states have been slow to address the danger.

'Many workers experiencing illness so severe they can't breathe'

However, it seems that like California, federal OSHA is listening. The agency announced its new initiative Sept. 25, 2023, which will focus on enhancing enforcement and providing compliance assistance.

"Many workers in the engineered stone industry are experiencing illnesses so severe that they're unable to breathe – much less work a full shift – because of their exposure to silica dust," said Assistant Secretary of Labor for OSHA Doug Parker.

Inspections will target manufacturers, material wholesalers

The new federal initiative will supplement OSHA's existing National Emphasis Program for Respirable Crystalline Silica to ensure that employers are following standards and providing workers with the protection they need to stay healthy.

Industries that will be subject to prioritized programmed inspections under this initiative include those engaged in cut stone and stone product manufacturing as well as brick, stone and related construction material merchant wholesalers.

Outreach efforts will include other industries that may work with engineered stone. OSHA will be sending affected employers and stakeholders information on the initiative as part of the outreach component. That information will include fact sheets on dust control methods and safer work practices for engineered stone manufacturing, finishing and installation operations.

[Read the story online](#) 

Workplace injuries, workers' compensation costs rising with extreme heat in the U.S.

Extreme heat is causing a rise in workplace injuries and workers' compensation costs, according to a global insurance brokerage and risk advisory company.

An analysis conducted in early 2023 found that heat-related workers compensation claims in the U.S. "have increased significantly over the last 10 years," according to Marsh, which used its "casualty big data lake" containing "millions of unique claims ... with billions of data points" to conduct the research.

The Southwestern U.S. in particular has seen the incidence of heat-related claims double during this period.

Marsh pointed to a 2021 study of U.S. workers' compensation claims from 2001 to 2018 to corroborate its findings. That study used data from injury claims "from the nation's largest workers' compensation system" finding that rising temperatures caused about 20,000 injuries per year. Likewise, a report in the Atlantic Council found that heat-related injuries are causing the U.S. a total economic loss of \$100 billion annually.

Climate risk already impacting claims

Extreme heat's impact on workers must be addressed by employers for a number of reasons, including:

- an absence of dedicated regulations which leaves workers vulnerable to heat-related health risks
- the fact that this upward trajectory of extreme heat and associated injuries are expected to persist, and
- the reality that extreme heat is a leading indicator for other types of workplace claims.

This data points to climate risk already having an impact on employers' workers' compensation claims, according to Marsh.

To get control of the situation, Marsh said that employers should:

- review workers' compensation claims to watch for trends and ensure insurance coverage is aligned to a company's individual risk profile
- assess exposure and use available tools to forecast increased exposure to build a case for action, and
- work with safety and human resources personnel to implement best practices.

[Read the story online](#) 

Driver killed by front-end loader whose operator failed to maintain line of sight

Operating equipment without a clear line of sight is never a good idea, as one operator found out when his front-end loader struck a tractor-trailer and killed its driver.

Driver crushed by truck which was struck by front-end loader

On March 9, 2023, Don Reynolds, a 60-year-old delivery truck driver employed by AMS Co., was making a stop at the Texas Lime Company Plant & Quarry mine in Johnson County, Texas.

Reynolds was hauling coke, a solid material leftover from oil refining. The mine's front-end loader operator would push the coke into place once the load was dumped at the unloading area. The front-end loader operator was called to another area of the mine shortly after Reynolds made a delivery. As he was leaving the area, the operator elevated the front-end loader's bucket as he traveled forward to clean out any remaining coke. He felt the front-end loader abruptly stop and saw that he had struck the rear of Reynolds' trailer.

The operator left the cab of the front-end loader and found Reynolds under the truck's left rear dual wheels.

Manufacturer warning labels weren't followed

MSHA investigators could find no mechanical problems with either vehicle that would have contributed to the incident.

What they did find was a warning label that stated, "When driving the machine or performing operations, always keep a safe distance from people, structures, or other machines to avoid coming into contact with them." The label also told operators to keep the bottom of the bucket 16 to 20 inches above the ground when traveling on level ground. Another warning label stated, "Improper operation can cause serious injury or death. Read manual and labels before operation."

Equipment shouldn't be moving if the view is obstructed

While this incident involved heavy mobile equipment at a mine, it's a good idea to remind forklift and heavy equipment operators in any industry that they shouldn't be moving if their view is obstructed. Driving without a clear line of sight could lead to life-changing injuries for, or even the death of, a co-worker.

[Read the story online](#) 

Contractor agrees to pay \$370K to avoid federal criminal prosecution for worker fatality

An Oklahoma construction contractor will pay \$370,680 in criminal and civil penalties to avoid federal prosecution on one count of ignoring federal regulations that led to a 2019 worker fatality.

Skinner Tank Co. entered into a deferred prosecution agreement in the U.S. District Court for the Western District of Missouri on Sept. 5, 2023, resulting in payment of \$195,660 in fines to OSHA and \$175,000 to the U.S. Treasury.

Company told employees fall protection was a hazard

OSHA began an investigation into Skinner after an employee working on the roof of a 56-foot-tall soybean storage tank fell to his death on Oct. 14, 2019. The agency found that Skinner failed to provide fall PPE to its employees and didn't require use of the safety equipment.

Investigators also found that Skinner provided "inaccurate safety information" to employees by telling them that "wearing fall protection actually presented a greater hazard than not wearing it."

OSHA initially issued a \$415,204 fine for willful violations for failing to require the use of fall PPE and provide fall protection training. The agency also made a criminal referral to the U.S. Department of Justice under the criminal provision of the Occupational Safety and Health Act.

Falls leading cause of workplace deaths in construction industry

"The resolution of this case sends a strong message that OSHA will hold employers accountable for willful violations of federal safety regulations that seriously or fatally injure their workers," OSHA Region Administrator Billie Kizer said. "Each year, too many workers lose their lives from falls – the leading cause of workplace deaths in the construction industry – because employers fail to provide fall protection."

In 2021, nearly one in five workplace deaths occurred in the construction industry, according to OSHA. Just over one-third of construction deaths were due to slips, trips and falls. Almost all of these were from falls to a lower level. The Bureau of Labor Statistics reports that the construction industry accounted for 46.2% of all fatal slips, trips and falls in 2021.

[Read the story online](#) 

Feds cite Ohio coal mine for unwarrantable failures that could have resulted in explosion

An Ohio mine is one of 14 mines identified by the U.S. Mine Safety and Health Administration (MSHA) in August 2023 as having multiple significant and substantial, or S&S, violations and unwarrantable failures.

The Hopedale Mine, operated by Leesville Land LLC, was found to have 16 violations with 10 being identified as S&S and another nine listed as unwarrantable failure violations.

While inspecting the Hopedale Mine, MSHA found that the mine operator:

- failed to perform adequate workplace examinations
- didn't properly maintain belts and walkways, which had accumulations of loose coal and coal dust, something the mine operator had been cited for in the past, and
- had enough accumulations of loose coal and coal dust along belts with bottom rollers that an explosion was possible.

Other violations included failing to:

- maintain a clear travel way along belts
- repair or replace damaged belt conveyor components
- identify hazards, and
- prevent hazardous conditions along belts throughout several shifts without taking any corrective actions.

2023 impact inspections identify 1,969 violations

Thirteen other mines in 10 states were targeted in MSHA's August 2023 impact inspections, resulting in 246 violations. Of those 246 violations, MSHA identified 94 that were considered S&S violations, which are reasonably likely to cause serious injury or illness.

Seventeen were found to be unwarrantable failure violations. Violations designated as unwarrantable failures occur when an inspector finds aggravated conduct that constitutes more than ordinary negligence.

So far in 2023, MSHA impact inspections have identified 1,969 violations, including 587 S&S and 40 unwarrantable failure findings.

[Read the story online](#) 

Temporary agency owner sentenced to year in prison for workers' compensation fraud

The owner of a Massachusetts temporary employment agency was sentenced to one year and one day in prison and three years of supervised release after pleading guilty to tax and workers' compensation fraud.

Dam Ngoc Luong, owner of Four Seasons Temp Inc., must also pay \$3,993,169 in restitution to the U.S. Internal Revenue Service (IRS) and \$155,870 to Traveler's Insurance Co.

Luong pleaded guilty on April 18, 2023 to two counts of filing false corporate and individual tax returns, three counts of failure to collect and pay employee taxes and one count of mail fraud. She was sentenced on Sept. 15, 2023.

From 2015 through 2019, Luong owned and operated Four Seasons, an agency that provided temporary workers for client businesses. The agency was responsible for paying employee wages, processing payroll, collecting and paying payroll taxes and maintaining workers' compensation insurance.

Instead of using client payments to her agency for tax and insurance purposes, Luong cashed most of the checks and deposited the funds into her business account, according to the U.S. Department of Justice.

On annual corporate tax returns, she reported to the IRS only the amounts deposited into her business account. Luong failed to pay federal taxes on more than \$14 million of the company's income. She also failed to report an additional \$3 million in pass-through income and failed to pay \$885,000 in personal income taxes.

Investigators found that Luong also paid more than \$12 million of employee wages in cash under the table and failed to withhold taxes from the cash wages.

Luong also defrauded her insurance carrier by concealing the cash wages she paid to her employees. By underreporting her payroll in this manner, she lowered her premiums and defrauded Travelers of \$155,000.

[Read the story online](#) 

Report: OSHA's efforts to protect warehouse workers are inadequate

OSHA has failed to effectively address high injury and illness rates in warehouses, according to a new report from a federal watchdog.

The U.S. Department of Labor Office of Inspector General (OIG) conducted a performance audit of OSHA warehouse inspection data from October 2016 through December 2021, finding that the agency needs to do more to protect warehouse workers.

Warehouse injury rates double that of all other industries

The OIG audit revealed that injury and illness rates at warehouses remained consistently high throughout the studied period at 5.1%. The rate in 2021 was 5.5 per 100 employees, which is more than double the rate across all industries.

Despite these consistently high rates, OSHA conducted a limited number of warehouse inspections, totaling 3,762. That amounts to an annual average of 4.1% of the establishments that self-classify as warehouses. The majority of these inspections, about 82%, were unprogrammed, meaning they were primarily driven by complaints and referrals.

OIG auditors also found that OSHA didn't perform enough warehouse inspections through its site-specific targeting program, which is specifically designed to reach establishments with high rates of injuries and illnesses.

OSHA had "limited visibility into the numbers and types of injuries and illnesses occurring in warehouses, including those classified as online retailers." That's because OSHA collected minimal injury data from employers and failed to effectively enforce mandatory employer reporting via the agency's Form 300A, according to the OIG report.

Audit offers 7 ways OSHA could improve

To better protect warehouse workers, OIG recommended that OSHA:

- update the criteria for the number of establishments to be included in the site-specific targeting program to better reflect industry growth

News Briefs — Safety Stories You Might Have Missed

- develop specific, measurable inspection goals for the site-specific targeting program and monitor progress toward that goal
- develop a more effective enforcement strategy to improve employer Form 300A compliance
- assess Form 300A data categories and gather more specific supporting information about injuries to better identify the count and type of injuries reported
- develop improved Form 300A data analyses to better identify trends
- develop specific measurable inspection goals for OSHA's warehousing National Emphasis Program, and
- issue specific training to address the training components of the warehousing National Emphasis Program.

'Tone of OSHA's response is discouraging'

The OIG report notes that OSHA responded by disagreeing with the report's overall findings but agreed that there is a need to increase the effectiveness of its enforcement activities to better protect warehouse workers.

However, OIG found "the tone of OSHA's response discouraging, as instead of focusing on the recommendations that could improve the safety of workers at risk, OSHA chose to question the methodologies used by the OIG."

OSHA's response didn't change the audit's conclusions, the report states.

[Read the story online](#) 

Federal data shows slight decline in traffic-related fatalities in first half of 2023

Traffic-related fatalities have dropped slightly in the first six months of 2023, according to federal data.

The U.S. National Highway Traffic Safety Administration (NHTSA) released its early estimates of traffic fatalities for the first half of 2023, finding "that traffic fatalities declined for the fifth straight quarter."

There were 19,515 people killed in motor vehicle traffic crashes during the period in question, representing a decrease of about 3.3%. The first half of 2022 saw 20,190 fatalities. Data shows that fatalities declined in the first and second quarter of 2023.

National Safety Council estimates released in August 2023 also showed a 3.3% decline for the same period.

The decline in fatalities coincides with an increase in vehicle miles traveled during the same period, the NHTSA said. That increase was about 35.1 billion miles, which is roughly 2.3% higher than the first half of 2022.

That results in a fatality rate of 1.24 fatalities per 100 million vehicle miles traveled for the first half of 2023, which is down from the projected rate of 1.31 fatalities per 100 million vehicle miles traveled.

NHTSA estimates a decrease in fatalities in 29 states, while 21 states, Puerto Rico, and the District of Columbia, are projected to have experienced increases.

"While we are encouraged to see traffic fatalities continue to decline from the height of the pandemic, there's still significantly more work to be done," NHTSA Acting Administrator Ann Carlson said. "NHTSA is addressing traffic safety in many ways, including new rulemakings for lifesaving vehicle technologies and increased Bipartisan Infrastructure Law funding for state highway safety offices. We will continue to work with our safety partners to meet the collective goal of zero fatalities."

The agency recently announced several safety initiatives aimed at reducing traffic deaths, including proposed rulemakings to require automatic emergency braking systems in passenger cars, light trucks and heavy vehicles.

[Read the story online](#) 

Construction worker gets summary judgment on Labor Law claim for fall from scaffold

A construction worker who was injured by a fall from a scaffold was granted summary judgment on his New York Labor Law claim when the defendants failed to prove the injury was the employee's fault.

The New York Appellate Division, First Department upheld a lower court decision granting the worker summary judgment based on his consistent testimony regarding the incident that injured him.

Scaffold moved 'for no apparent reason'

Salvatore Cafisi was working at a construction site when he was injured while descending from a scaffold. The scaffold started to move "for no apparent reason" causing Cafisi to let go and fall onto a pile of metal straps. Those metal straps were "like a sheet of ice underneath his feet," causing him to fall backwards onto the floor.

Cafisi filed a Labor Law claim alleging that the general contractor and owner of the property failed to provide adequate safety devices to protect workers from falling. A lower court granted Cafisi summary judgment on Sept. 9, 2022.

Defendants: He didn't prove the equipment was defective

The contractors and property owner appealed the decision, arguing that Cafisi:

- failed to prove the scaffold was defective, and
- didn't identify what kind of safety device would have prevented the incident.

Safety device was inadequate

The appeals court disagreed, finding that Cafisi wasn't required under the Labor Law to prove that the scaffold was defective.

According to the appeals court, Cafisi also established that he was provided with a safety device, the scaffold, and that it proved to be inadequate.

Further, the appeals court found that Cafisi was convincing as the sole witness to the incident because he described the details consistently every time he had to testify.

[Read the story online](#) 

Study: Miners more prone to health issues than workers in other manual and non-manual jobs

Not only is mining a dangerous job, it also leads to more health issues than other jobs involving manual and non-manual labor.

National Institute for Occupational Safety and Health (NIOSH) researchers found that 27.9% of the miners involved in the study suffered from high blood pressure. That was the highest percentage found among all the workers from a variety of industries who participated in the study.

Hearing loss, back pain also prevalent

Hearing loss was also more frequent among miners, with almost 11% reporting moderate-to-deaf hearing loss.

Compared to non-manual workers, miners reported 24% more lower back pain and almost two times more leg pain related to lower back pain. Miners also reported 26% more joint pain during the period studied.

More than 105K workers from multiple industries involved

Researchers used the 2007-2018 National Health Interview Survey to calculate the frequency of health issues among miners and manual workers in other industries. Because there were only a few female survey respondents, the study included 105,409 male participants. The number of participants from each industry included:

- mining (337)
- construction (12,494)
- transportation and material moving workers (6,426)
- non-manual (68,859)
- oil and gas (795)
- manufacturing (13,934)
- agriculture, forestry, and fishing (2,564), and

More research needed on hazards that lead to health problems

Based on previous research on chronic pain and opioid misuse along with the high pain prevalence among miners, researchers suggest that mine operators should reduce injury-causing work factors. At the same time, mine operators should be providing "an environment where workers can address pain management and substance use."

[Read the story online](#) 

Dog daycare facility ordered to pay \$50K for terminating employees with COVID-19 concerns

An Idaho dog daycare facility and its owner were ordered by a federal court to pay \$50,000 in damages for terminating two employees who raised COVID-19 safety concerns in June 2020.

The U.S. District Court for the District of Idaho entered a consent judgment Oct. 2, 2023 in which House of Hounds LLC and its former owner, Kayla Martin, must pay each of the two employees \$25,000 in general and punitive damages.

Martin must also:

- provide a neutral employment recommendation
- remove any reference to the incident from the workers' employment records, and
- apologize publicly on social media to the terminated employees.

House of Hounds is required to provide OSHA-approved management training and send a notice to all new and some former employees regarding their rights. Martin and her company are also forbidden from any future violations of federal whistleblower protections.

Martin sold House of Hounds during the legal proceedings.

Employer told state labor officials both workers quit

OSHA investigated House of Hounds after the two terminated employees filed a whistleblower complaint. The employees claimed that Martin fired them after they expressed concerns about working with a co-worker who was waiting for COVID-19 test results.

Investigators learned that Martin told the employees to finish what they were working on, clock out and go home. Martin then removed the two employees from the company's social media platform and didn't send them their revised weekly work schedule, which OSHA said reflected the termination.

Martin and House of Hounds then challenged the two whistleblowers' unemployment insurance benefits claim and reported to the Idaho Department of Labor that they both quit.

Following the OSHA investigation, the Department of Labor's Office of the Solicitor filed a complaint against the employer for discriminating and retaliating against the employees.

[Read the story online](#) 

Contractor cited for endangering subcontractors enters into \$180K agreement with OSHA

A New Jersey general contractor entered into a settlement agreement with OSHA over violations relating to subcontractor employees endangered by high-voltage power lines near their work area.

Under the terms of the agreement, Litana Development Inc. will pay \$180,000 in fines for the citations.

Litana must also:

- create a written safety plan which must then be submitted to OSHA
- retain a qualified safety professional to complete a job hazard analysis for all existing and future worksites
- inform OSHA of all current and future worksites, and
- create a subcontractor management plan, including a requirement that onsite managers of subcontractors complete 30-hour OSHA training and onsite employees of subcontractors complete 10-hour OSHA training.

The settlement agreement was the result of OSHA inspections conducted at a Paterson, New Jersey worksite in 2021 and 2022. Inspectors found that Litana was allowing workers employed by four subcontractors – Prata Construction LLC, Konopka Construction Inc., Freitas Construction LLC, and Elite Brothers Construction LLC – to work in close proximity to high-voltage power lines at the worksite.

Litana, as the general contractor, permitted the workers to erect scaffolds and work between five and seven feet from the live power lines. This resulted in two willful citations to Litana and two willful citations to each of the subcontractors.

OSHA visited the worksite multiple times thereafter and found workers exposed to the same hazards. The agency posted an imminent danger notice and obtained a temporary restraining order in federal court to stop Litana and its subcontractors from working within 11 feet of the power lines. Three more willful citations were issued based on the additional inspections.

In order for the company to continue work, the power lines had to be moved across the street from the worksite.

[Read the story online](#) 

Could a cyberattack lead to an OSHA citation? Expert claims it could happen, in theory

When most people think “cyberattack” OSHA probably isn't the first government agency that comes to mind, but for safety professionals, should it be?

Theoretical scenarios are a ‘novel interpretation’

“Theoretically, cyberattacks might have an effect on workplace safety and health,” Cozen O'Connor attorney John Ho wrote. “For example, if a cyberattack compromised an electronic guarding system, which resulted in an employee injury, a guarding-related standard may arguably be relevant.”

Likewise, the lockout/tagout standard could be used in a case where the cyberattack compromised the use of robotic machinery and caused an employee to be injured, “depending on the underlying facts.”

Ho admitted that these “conceptual ties to specific standards would be a novel interpretation,” before mentioning that OSHA would be more likely to use the General Duty Clause for violations that would be much more common during a cyberattack.

Las Vegas casino attacks offer more likely example

For example, Ho cited a recent series of cyberattacks that affected business operations in several Las Vegas casinos.

In those attacks, key cards that allowed access to certain rooms were rendered unusable.

The General Duty Clause requires employers to take reasonable steps to prevent or reduce recognized hazards. Again, Ho called it “a stretch” for OSHA to interpret the rule that aggressively.

Uptick in injuries from cyberattacks would get OSHA's attention

Ho pointed out that “it may be a matter of time before one of these cyberattacks results in a serious employee injury” and “if such injuries become more common, OSHA might consider the application of the general duty clause.”

The bottom line is that while cyberattacks may not be on OSHA's radar right now, “all employers need to carefully consider strategies to protect themselves against cyberattacks to avoid what could be a tremendous liability, including but not limited to breach of personal data.”

[Read the story online](#) 

National Safety Council wants to help employers use safety technology to combat MSDs

Safety technology has been shown to reduce workplace musculoskeletal disorders (MSDs), but many employers don't have the knowledge to properly assess and use these new tools, according to the National Safety Council (NSC).

To address this issue, NSC released a report, Emerging Technologies for the Prevention of Musculoskeletal Disorders, to “help employers navigate the evolving technology marketplace.”

This report “aims to bridge the gap between solution providers and adopters so that all organizations, regardless of their size or industry, can understand technology solutions available to minimize MSD risks and create safer outcomes for their workers,” said Sara Ischer, NSC MSD Solutions Lab program lead.

Executives discuss MSD concerns, highlight successful use of tech

Emerging Technologies for the Prevention of Musculoskeletal Disorders references almost two dozen academic publications to assess the benefits of the most common ergonomics-related safety technologies, including:

- computer vision
- wearable sensors
- exoskeletons
- autonomous and semi-autonomous materials handling equipment
- digital twins, and
- extended reality.

The report found that:

- computer vision may be a helpful tool for large organizations to more effectively aggregate and analyze ergonomic risks across an enterprise
- workers may benefit from the use of wearable sensors where use of engineering controls isn't financially feasible, and
- passive exoskeletons, which have been proven to reduce muscle activity by up to 40% and can decrease worker fatigue by 45%, can reduce MSD risks from manual materials handling.

[Read the story online](#) 

California is first state to adopt general industry workplace violence prevention standard

On Sept. 20, 2023, California became the first state in the U.S. to adopt a general industry workplace violence prevention standard.

The new standard, which takes effect on July 1, 2024, will apply to most employers, with only a few exceptions.

Requirements are similar to existing standard for healthcare

Under the standard, which was introduced in Senate Bill (SB) 553, covered employers are required to develop a workplace violence prevention plan as part of their Injury Illness Prevention Plans (IIPP).

All of the standard's requirements are "very similar to the workplace violence prevention standard that Cal/OSHA adopted in Oct. 2016" for the healthcare industry, according to law firm Littler Mendelson.

The workplace violence prevention plan must include:

- the designation of individuals who are responsible for the plan
- effective procedures to obtain the active involvement of employees and authorized employee representatives in developing and implementing the plan
- methods the employer will use to coordinate the plan with employees
- effective procedures for the employer to accept and respond to reports of workplace violence, and to prohibit retaliation against a reporting employee
- effective procedures to communicate with employees regarding workplace violence, including how to report an incident or threat, effective means to alert employees to the presence of a workplace violence emergency and how to obtain help, whether from staff assigned to respond to an incident or from law enforcement
- procedures to identify and evaluate workplace violence hazards
- procedures for post-incident response and investigation
- procedures to review and revise the plan as needed, and
- initial training about the plan when it's first established and annual training.

Various records specified in the standard are also required, including:

- records of workplace violence hazard identification, evaluation and correction
- training records
- a violent incident log for every workplace violence incident, and
- records of workplace violence incident investigations.

These records must be maintained for at least five years and must be produced to Cal/OSHA upon request.

Teleworking employees, corrections facilities exempted

Some of the more controversial provisions from earlier versions of SB 553 were deleted in the final version. The deleted provisions included one that would prohibit retailers from confronting suspected shoplifters except through "dedicated safety personnel," law firm Jackson Lewis said.

Employers exempted from the workplace violence prevention plan include:

- healthcare facilities, which are already covered under a separate standard
- facilities operated by the California Department of Corrections and Rehabilitation
- employers that are law enforcement agencies, including those that must be in compliance with the Commission on Peace Officer Standards and Training Programs
- employees who are teleworking, and
- places of employment where there are fewer than 10 employees working at the place at any given time, that are not accessible to the public and are in compliance with the requirement to develop and maintain an IIPP.

SB 553 also provides that "a collective bargaining representative of an employee who has suffered unlawful violence from any individual may seek a temporary restraining order and an order after hearing on behalf of the employee."

[Read the story online](#) 

Sharpen Your Judgement

Supervisor's bad behavior leads to employee injury: Was it the company's fault?



"Does anyone have any questions before I hand out the quiz?" Safety Manager Pete Travers asked the assembled group of forklift operators.

After waiting a few moments, Pete said, "OK, let's get started. We'll go over the answers once everyone is done."

As soon as Pete finished talking, the conference room door opened and John Jenkins, the company attorney walked in.

"Are you busy?" John asked. "We need to talk."

Pete, feeling a little agitated, gestured at the room and said, "I'm conducting refresher training. I'll catch up with you as soon as I'm done."

The look on John's face said he wasn't happy with that answer, but he accepted it anyway. He left the room so Pete could finish the refresher training.

'Incident should never have happened'

Later, Pete reported to John's office, as promised.

"You wanted to talk to me about something?" Pete asked.

"Yes," John said. "OSHA is citing us and I need information. The citation

says something about an employee at one of our satellite locations who was struck and injured by an overhead door. It's alleging several violations of the lockout/tagout standard and failure to ensure use of safety helmets."

Pete groaned in disgust at mention of the incident.

"That incident should never have happened," Pete said. "In my opinion, the supervisor of that worksite was the main reason why the employee, Anthony, got hurt."

"What do you mean?" John asked.

"That worksite is in a location our company rents from a third party," Pete explained. "There was an overhead door that was stuck in a partially open position.

"Anthony saw the door in that state and did what he was supposed to do: report it to the landlord," said Pete. "The landlord called a repairman and told Anthony it would be fixed later that afternoon.

"Anthony reported this to the site supervisor, Howard," Pete said. "Instead of letting the repairman take care of it, Howard gets the bright idea to fix it himself and have his crew help him."

Supervisor threatened worker who called for stop-work

"That's against the rules?" John asked.

"Yes," Pete replied. "While all of them are equipment technicians, none of them were trained on how to fix an overhead door. They also didn't have the proper tools or PPE for doing so.

"Anthony attempted to exercise his stop-work authority by suggesting a time-out, because he felt that the work was unsafe," Pete added.

"What happened when he did that?" asked John.

"Howard threatened him with a write-up and termination," Pete replied.

"Oh, that's not good," John said.

"Exactly," said Pete. "Long story short, Anthony is up on a ladder using a prybar on the door. The door released, struck him and knocked him onto the floor. Now he has a broken pelvis and other injuries."

"We can definitely fight this," John said. "It's clearly unpreventable employee misconduct on the part of the supervisor."

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

Sharpen Your Judgement

Supervisor's bad behavior leads to employee injury: Was it the company's fault? (continued)

The decision

No, Pete's company lost. An administrative law judge with the Occupational Safety and Health Review Commission ruled that the lockout/tagout standard was violated and the company failed to provide head protection when it was needed.

The company argued that it couldn't be blamed for the conduct of the supervisor, who it said caused the incident in the first place.

OSHA claimed that a supervisor's knowledge of violations is imparted to an employer, meaning that the

unpreventable employee misconduct defense shouldn't stand.

Supervisor conduct points to lax enforcement of safety policy

The judge agreed with OSHA, finding that "as this court has stated on more than one occasion, 'negligent behavior by a supervisor or foreman which results in dangerous risks to employees under his or her supervision, ... raises an inference of lax enforcement and/or

communication of the employer's safety policy.'"

The company wasn't entitled to rely on the unpreventable employee misconduct defense because "its own supervisor observed and directed the violative activity, which indicates a lax enforcement and/or communication of (the company's) safety policy," according to the judge.

Analysis: Supervisors can make or break a safety program

Supervisors are an important component of an employer's safety program. Typically, they're out on the front lines with the employees who are under their supervision. That means they are the management personnel employees have the most contact with.

For employees, supervisors are the "face" of the company while also being in a position to have the most impact on employees, whether good or bad.

If employees see that supervisors break safety rules or just generally don't care about safety, then those employees will be far less likely to take it seriously themselves. That's why it's important that supervisors adhere to the safety program and act as good examples to the workers under them..

Cite: *Secretary of Labor v. Sunbelt Rentals*, Occupational Safety and Health Review Commission, No. 20-0306, 7/24/2023. Dramatized for effect.

[Read more You Be The Judge in your Membership Dashboard](#) 

ESSENTIAL COMPONENTS FOR A GOOD SAFETY PROGRAM



SAFETY MANAGEMENT

When it comes to safety, remember the 3 E's: Establish, Educate, Enforce

 by Merriell Moyer

Safety professionals know that at its core a good safety program requires the three E's: establish, educate and enforce.

Specifically, establish specific safety rules, educate employees about those rules and the hazards they face on the job, and enforce those rules consistently.

The three E's are the brainchild of Andrew Alvarado, an attorney with the law firm Dickinson Wright. Alvarado wrote a blog post detailing how the three E's can help employers fight an OSHA citation using the unpreventable employee misconduct defense. However, these same principles are also key components to a good safety program.

Unpreventable employee misconduct defense and general safety

The unpreventable employee misconduct defense is meant to protect employers from OSHA citations when an employee goes out of their way to violate workplace safety rules. That means the employer has done everything in their power to make the workplace safe and the employee's poor judgment or bad behavior is what led to the citation.

A successful unpreventable employee misconduct defense will see the employer proving that it:

- established rules to prevent the specific incident or injury
- adequately communicated these rules to its employees

- took steps to discover employee violations of the rules, and
- effectively enforces the rules when employee violations are discovered.

If you visit the Occupational Safety and Health Review Commission (OSHRC) website and begin perusing the commission and administrative law judge decisions there, you'll see that each of these components must be in play for this kind of defense to succeed.

Why is that? Because all of these components, which are summed up by the three E's, demonstrate that an employer is trying to keep workers safe.

"In essence, OSHA will consider whether the employer had a rule in place that would have prevented the

injury and whether the employer effectively educated its employees and enforced the rule," Alvarado explained. "If the employee at issue was unaware of the rule or did not believe somebody would discipline them for violating it, then the rule offers little protection for the employee or the employer."

That brings us to the three E's.

'E' No. 1: Establish safety rules

In order to keep workers safe, an employer must establish safety rules to prevent injuries and incidents specific to their workplace.

The "specific" part of the previous sentence is extremely important as "general rules such as 'stay alert' and 'do not operate this machinery while tired' are practical, (but) they may not be specific enough to support the unpreventable employee misconduct defense."

If those general rules aren't adequate enough to support the unpreventable employee misconduct defense, then they also aren't enough to keep workers safe.

To make rules that are at least adequate for this purpose, employers "should carefully consider the hazards associated with their line of work and what types of injuries may occur" and then develop rules to specifically address and prevent those hazards.

'E' No. 2: Educate your employees

Once the safety rules have been established, the next step is effectively communicating those rules to employees.

There are many ways to do this throughout an employee's time with

an employer, from orientation the whole way to retirement, including:

- employee handbooks
- safety manuals
- regular training
- refresher training
- safety meetings, and
- toolbox talks.

Anytime the rules are communicated, make sure employees sign off on it. That documentation is very important. Not only does this help prove in court that you communicated the rules, it also helps you keep track of who needs training and when.

'E' No. 3: Enforce the rules

This is a big one. All three E's are important, but this one is really critical. A work rule that isn't enforced is not effective. This is the one that often catches employers out when it comes to unpreventable employee misconduct defenses in front of the OSHRC.

What this means is that you "must establish sufficient processes to discover and discipline" employee safety violations.

If you drop the ball on this one, then you did nothing but waste your time with the first two. Why? Because if employees know they can just break the rules with impunity then they will. It's that simple.

Sure, some employees may care about safety and will do their best to abide by the rules even when no one is looking. It's just as likely that there will be others who don't care and more who care only in certain situations.

Alvarado pointed out that "employers can monitor employee compliance in several ways

depending on the type of work involved and the nature of the workplace." Employers can supervise employees as they perform their work, empower all employees to report rule violations or engage in regular audits to ensure compliance with the rules, for example.

Another thing to keep in mind with enforcement is consistency. Whatever the disciplinary action is for a given violation, make sure that it's of the same severity every time, no matter what.

"If an employer has a 'zero tolerance policy' for a fundamental rule, they must consistently enforce that policy or risk losing the ability to assert the unpreventable employee misconduct defense," according to Alvarado.

Again, if the employer loses the ability to assert that defense, it also likely means that the workplace isn't as safe as it should be.

Remember there isn't a one-size-fits-all solution

In following the three E's concept, remember that each element needs to be tailored to your specific workplace.

As Alvarado pointed out, there is no one-size-fits-all solution when it comes to workplace safety "so it's crucial for employers to carefully evaluate the nature of their employees' work and consult with an attorney to ensure it has sufficient processes in place to protect their employees and shield themselves from unpreventable employee misconduct."

[Read this story online](#) 



Worker loses fingertip while reassembling pump at bakery: \$298K OSHA fine

OSHA fined Hostess Brands LLC when a 29-year-old worker suffered the amputation of a fingertip while reassembling a pump at a facility in Chicago.

Inspectors found that the employer could have prevented the injury by ensuring proper lockout/tagout of equipment.

The investigation revealed that Hostess didn't train workers on lockout/tagout procedures and didn't adequately guard manufacturing equipment.

Fine: \$298,010

Company: Hostess Brands LLC, Chicago, Illinois

Business: Commercial bakery

Reasons for fine:

Two willful citations for failing to:

- maintain procedures for the control of potentially hazardous energy
- ensure the established procedure for energy control was followed in sequence

One repeat violation for failing to:

- perform annual inspections of the energy control procedure

Eight serious violations for failing to:

- clearly outline the scope, purpose, authorization, rules, and techniques used for the control of hazardous energy
- use procedures to provide a level of protection equivalent to that provided by the implementation of a personal lockout or tagout device when servicing equipment
- train employees in recognition of hazardous energy sources, the type of energy available and the methods necessary for energy isolation
- provide machine guarding at points of operation and ingoing nip points
- protect exposed parts of horizontal shafting 7 feet or less from the working surface
- protect vertical shafting 7 feet or less from the working surface
- ensure unprotected ends of projecting shafts had smooth ends
- enclose sprocket wheels and chains 7 feet or less above working surfaces

[Read more Who Got Fined & Why in your Membership Dashboard](#) 



10 ways to ensure that your safety metrics have real value for your company

Metrics. Safety professionals and industrial hygienists use them a lot. But are they really as valuable as they seem?

Yes, metrics are a great tool to use for assessing programs, following progress on goals and aiding in decision making. Good metrics are valuable because they allow you to make informed decisions and can provide a picture of what the specific issues are within your organization.

However, metrics can also be misleading. Sometimes that's because the person doing the measuring may be doing so incorrectly or has failed to set a proper target.

Conversely, members of management could misunderstand metrics without a proper presentation or adequate context.

So, how do you ensure that your metrics are up to snuff? Here are 10 ways to ensure that your metrics have real value:

1. Know your target

If you don't know what your target is then you don't have a metric, said Alan Leibowitz, President of EHS Systems Solutions, during a presentation at the 2023 American Industrial Hygiene Conference & Expo in Phoenix, Arizona.

You must know why you want the metric in the first place. If you're taking these measurements and you come up with a number you

don't understand, then you're in trouble, Leibowitz said.

This is especially true when it comes to metrics and recordkeeping. When you or someone else comes back to check on past metrics and you haven't figured out what your standard is or what your objective is then you've got a real risk in your organization.

2. Metrics should trend over time

Metrics are most effective as a management tool when they're trended over time, according to Leibowitz.

One-and-done metrics can be interesting, and they might give you some information, but they don't give you an overall picture of the problems you're trying to address.

3. Look for a range, not an absolute

Very few metrics have an absolute number that you have to achieve. Most of what you're trying to achieve with metrics is a range of values.

For safety professionals, you typically have to first calculate the range you want the metric to fall into ahead of time for it to be valuable.

4. Make sure they're measurable and meaningful

Ideally, you want metrics to be something measurable that you can actually quantify.

You also want them to be meaningful. To determine that, it's helpful if you ask yourself:

- Will they make a difference within your organization?
- Can they provide improved performance?
- Are they standardized? You want to be able to compare metrics from one place to another. You also want to be able to replicate them using the same information to get the same outcome.

5. Use the right tool to measure

If you're not using the right tool to take your measurements, then you're going to end up with data that you're not confident in. This results in data that's not precise and fails to provide the information you're looking for.

To combat this, you must have a wider range of valuations to give yourself some confidence. Understand where improvements can be made and then re-evaluate to make sure those improvements are actually working.

Case Study

10 ways to ensure that your safety metrics have real value for your company (continued)

6. Ask yourself if they're objective, valid and predictive

You want metrics to be objective and free from biases.

They should also be valid and mean what you say that they mean.

You also want them to be predictive. Ask yourself if they can tell you what direction you're currently going in.

7. Make sure they're actionable

Ask yourself if these metrics can lead to some sort of action.

A metric you can't improve upon is a pretty useless metric. That's why you need to know if they really represent strategic plans and growth.

8. They must be transparent

Leibowitz pointed out that nothing in metrics frustrates him more than when someone gives a number without also providing the core data and context.

If they're being shared with someone else at any point, then metrics must be transparent. They must be made crystal clear by putting them into a context that your audience can understand.

"Metrics you present to other safety professionals can be more sophisticated than metrics you're showing to line personnel," Leibowitz said. "By the same token, line personnel, with education, would probably understand the specific data about their operation much better than a group of safety professionals unfamiliar with the operation would."

Whoever you may be presenting to, make sure they understand the metrics that you've selected. When it comes to leadership, the C-suite likes to see something with peaks and valleys, not just raw numbers without context.

9. Make sure they're aligned with company standards

Speaking of presentations, you want your metrics to align with the same practices and policies that govern the metrics used for other aspects of the business.

In other words, craft the visuals so that your metrics program looks the same as those within the rest of the company. Leadership is more likely to take them seriously when this is the case.

10. Ask yourself if they're working or not

Once the metrics are fully in play and you're seeing results, you have

to analyze whether the changes you've made based on that information are working.

One of the most useful things with metrics is that after you've done some improvements, you can ask if the changes you made led to the results you hoped would occur. That doesn't always happen. There may be occasions when you've made a change and it doesn't work. That's OK.

However, keep in mind that it's a good idea to let leadership know what you're trying to accomplish before you present the metrics to them. You don't want to show them a metric that's out of compliance for the first time and they think, "Well, you're not doing your job." That's not right, because knowing that something is out of compliance is part of a safety professional's job. Preparing company leadership for instances when you have occasional issues is also part of a safety professional's job.

Keep in mind that leadership will manage their operations to the goals you set based on these metrics, so you want to make sure that those goals are appropriate. That way you won't end up with goals that are non-productive or potentially dangerous to your workers.

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HAZARDS

Don't let poorly maintained equipment become a hazard: Safety, maintenance go hand in hand



by Merriell Moyer

\$6.5M barge sinks

due to bad repair job, poor maintenance practices



Poorly maintained equipment is a hazard for obvious reasons, and that's why safety and maintenance often go hand in hand.

This means that operators need to inspect their equipment, immediately report any damage or defects and waste no time in taking a faulty machine out of service.

The maintenance department then has to play its part to make sure the equipment is repaired properly and is actually safe to use again.

If any of the links in this chain fails, a major hazard could be created.

For example, a National Transportation Safety Board investigation into a capsized barge revealed that the incident occurred because:

- the captain failed to report what he deemed was minor damage to the vessel's hatch covers
- crew members improvised repairs, including using heavy metal plates to replace the missing covers, and

- the owner failed to ensure that proper maintenance and permanent repairs were performed.

Poorly repaired crane barge sinks, costs company \$6.3M

The crane barge *Ambition* was being towed when it capsized and sank on June 15, 2022, releasing 1,980 gallons of oil. There were no injuries

reported. The vessel was a total loss estimated at \$6.3 million.

Because of the height of the crane, the *Ambition* was being towed by the towing vessel *Karen Koby* in the Gulf of Mexico about 48 miles southeast of Cameron, Louisiana.

During the early part of the voyage, the port bow of the *Ambition* grazed a wooden piling channel marker. The captain of the *Karen Koby* determined that the contact was light enough that it didn't warrant a check for damages. He also didn't notice any damage to the marker, so he didn't report the contact to the U.S. Coast Guard.

Unsecured metal plates used as hatch covers

While at a fuel stop hours later, a deckhand inspected the crane barge. He noted that the hatch cover gaskets weren't in place and not all of the hatch cover lids were physically locked. At least six of the hatches weren't covered or secured. He also noted visible hull damage.

The crew at the fueling station were employees of the owner of the *Ambition*, Rigid Constructors. When told of the hatch cover and hull issues, the Rigid crew placed a large metal plate over the hatches with the missing covers as an improvised solution. The crew supervisor told the captain he was "secured" and could depart with "no restrictions."

Tugboat suffers unexpected slowdown

Overnight, the first mate of the *Karen Koby*, who had taken the helm to give the captain some

rest, began to notice the tugboat's speed was slowing. The slowdown was occurring despite the throttle controls being at the same setting they'd been for hours. As this got worse, the first mate woke up the captain to help him check on the *Ambition*, which was hard to see in the darkness.

They used a spotlight to see what was going on with the *Ambition*, but it didn't help them detect what was happening. Eventually, a crew member saw the *Ambition* capsize and begin to sink.

The crane barge partially sank in about 54 feet of water with its port bow embedded in the sand and its starboard quarter protruding out of the water. The crew of the *Karen Koby* reeled in as much tow line as possible, then cut the cable. The tugboat remained on scene with the barge until help arrived.

Bad weld in hull caused initial flooding

During a post-salvage examination, NTSB investigators found a 25-foot-long separation along the weld seam in the hull plating. This poor hull condition caused the initial flooding of the interior of the *Ambition*. The flooding was made worse by the hatches and covers that were in poor condition.

The NTSB determined that Rigid Constructors' failure to conduct thorough inspections, perform permanent repairs and follow good maintenance practices led to the incident.

However, the *Karen Koby's* captain's failure to report damage and continue the voyage despite the poor condition of the hatches

and their covers also contributed to the incident.

Good maintenance practices would've prevented this incident

Thankfully, no one was injured in this incident, but it still cost the company \$6.3 million.

The incident could have been easily avoided with proper reporting and inspections, regular maintenance, and permanent repairs.

[Read this story online](#) 

What Would You Do?



Is equipment operator wrong for fudging the safety rules to get the job done?

Manager Mike Kelly was in his office, chin deep in paperwork. However, he was also finding and following every possible distraction that cropped up around him.

I'll never get myself out of this if I don't focus, he thought as he began what he hoped would be a concerted effort to chip away at the mountain of administrative work in front of him.

There was a knock at his office door. "Come in," he said with no hesitation. He really didn't want to do the paperwork anyway.

Janet Costello, the warehouse supervisor, entered and closed the door behind her.

"Sorry to bother you, but I've got a problem," she said. "I've had some workers in other departments tell me that the warehouse forklift operators have been driving a little recklessly lately."

"Have you seen it yourself?" Mike asked.

"No, but I do have my suspicions," said Janet. "We've been extremely busy lately and some of them may have developed bad habits with the increased workload. It doesn't help that I've been stuck in the office since we're shorthanded."

"I could use a break from this paperwork," Mike said. "I'll do another safety walk and see if I can spot anything."

He slowed down but didn't come to complete stop

Later, as Mike was on his walk through the warehouse, he saw a

forklift operator, Gary Peters, slow down but not stop at an intersection. Gary sounded his horn like he was required to according to the safety rules, but he did it as he was going through the intersection, rather than stopping, sounding the horn and then proceeding.

"Gary!" Mike called out. "I need to talk to you a minute."

"Sorry, I don't have time," Gary said. "This is a hot order. The truck driver is already here to pick it up and it has to go out ASAP."

"That's no excuse for ignoring safety," Mike said. "I saw how you went through that intersection."

"I followed the rules," Gary insisted. "I approached with caution and sounded my horn."

"You only slowed down, you didn't stop," said Mike. "And you sounded your horn halfway through the intersection. That's not following the safety rules."

"Look, I don't have time for this," Gary said a second time, returning to his work.

If you were Mike, what would you do?

Rule was broken, he should be disciplined

Gary obviously broke the rule. He tried to make it look like he didn't. If nothing else, the way he approached the intersection acknowledged there was a rule that he was definitely breaking.

The main point is that he broke a rule for the sake of production. However, he missed the point that since it's that busy, he should be

even more cautious. His co-workers may be distracted or fatigued and could also blow through an intersection without thinking. That could lead to an incident and potentially injuries to all of the workers involved.

Gary should be written up. Mike should also hold a safety meeting and reinforce the company's rules on safe forklift operation.

A thorough explanation is warranted

Yes, Gary should be disciplined for breaking the rule. However, Mike needs to really break down the reasons why for the employee.

In his head, Gary may have thought he slowed down more than he did. He was given a time-sensitive task to accomplish. While that doesn't excuse what he did, if Mike thoroughly explains what he saw and what the consequences could be, it'll certainly help reinforce the rule for Gary.

Federal mine safety rule good one for all operators to remember

The U.S. Mine Safety and Health Administration (MSHA) states that equipment operators must "maintain control of mobile equipment while it is in motion, and to operate at speeds consistent with conditions of mine roadways, tracks, grades, clearance, visibility and traffic."

The same could be said of equipment operators in any industry, whether they're operating

What Would You Do?

Is equipment operator wrong for fudging the safety rules to get the job done? (continued)

forklifts in a warehouse, tractor trailers on the highway or bulldozers on a construction site.

MSHA also points out that it's the employer's responsibility, via safety rules, to ensure that equipment operators always maintain control of their vehicles.

Driving recklessly and taking unnecessary chances can lead to incidents, injuries and even death.

Excavator operator drives into sediment pond, drowns

Take, for example, an MSHA investigation into the death of an equipment operator who traveled over a 2-foot berm into a sediment pond.

Elaborio Garcia was a 42-year-old equipment operator employed by the La Havana Pit mine in Hidalgo County, Texas.

Garcia only had five days of mining experience, but he did have previous experience as an equipment operator in the oil and construction industries. That included experience using an excavator to dig out water and mud traps.

On Feb. 25, 2023, Garcia was assigned to use an excavator to clean out the north end of the mine's sediment pond.

After a safety meeting, Garcia's supervisor saw him removing material from the sediment pond in the area he was instructed to work.

Later, the supervisor saw Garcia driving the excavator towards the barrier berm on the west side of the sediment pond. Approximately 15 minutes passed before the supervisor again checked on Garcia.

This time, he noticed the boom on the excavator was lower than normal, so he drove out to check on the equipment operator.

The supervisor found the excavator submerged in the sediment pond. It had traveled over a berm that blocked access to the roadway towards the south end of the pond.

Emergency responders found Garcia in the submerged cab of the excavator. He was pronounced dead at the scene.

Feds: Incident caused by failure to maintain control of equipment

The incident location was about 355 feet away from the location where Garcia had been assigned to work, according to MSHA investigators. That area of the pond was 10- to 12-feet deep and was surrounded with berms that were 2-feet high.

Once the excavator was recovered from the pond, investigators found its throttle was in the "full throttle" position and that Garcia was likely wearing his seat belt when the incident occurred. There were no signs of safety defects or interference with any of the controls.

Garcia's training was complete according to MSHA standards. The area the incident occurred in didn't receive a workplace examination that morning, but that was because no work was scheduled to occur there.

Investigators determined that the root cause of the incident was Garcia's failure to maintain control of the excavator and the mine's failure to ensure employees maintained control of mobile equipment.

All of the evidence pointed to that fact, despite no clear cause being found. Garcia strayed from the work area for some reason, lost control of the excavator while it was set to full throttle and crashed into the pond.

Training can help prevent these incidents

The employer has since trained all of its employees on best practices for maintaining control of mobile equipment and where this equipment should be located when working near or cleaning out sediment ponds.

Refresher training and meetings on best practices for maintaining control of equipment is always a good idea to help prevent this sort of incident from occurring in the first place.

[Read more What Would You Do? in your Membership Dashboard](#)



Workplace violence incident at healthcare facility results in \$15K OSHA fine

OSHA is citing a Florida psychiatric health and substance disorder facility for failing to protect employees from workplace violence involving patients.

Inspectors learned that a registered nurse at the facility was writing reports when a patient entered the staff-only workspace. The patient punched and kicked the nurse in the face and head, causing several injuries including lacerations and a loss of consciousness.

Since 2017, the agency has investigated three facilities in Florida affiliated with this employer after similar complaints about exposure to workplace violence.

Fine: \$15,625

Company: UHS of Delaware Inc. and TBJ Behavioral Center LLC, operating as River Point Behavioral Health, Jacksonville, Florida

Business: Healthcare

Reasons for fine:

One serious violation for failing to:

- provide a place of employment free from workplace violence hazards likely to cause death or serious physical harm

[Read more Who Got Fined & Why in your Membership Dashboard](#)

Training Tips



When's the best time to train? Find out now

Turns out it might be time to switch up your safety training times.

Research shows it matters what time of day you schedule your training sessions.

Workers are two to three times more likely to pick up on training and remember it when sessions are held in the morning.

By contrast, two out of three workers admitted they daydreamed more often in afternoon sessions.

Lesson: You might not be able to hold every meeting in the morning, but hold the most important sessions before noon.



Make workers the investigators and training will really stick

Getting your crew involved is a crucial part of effective safety training, but it's not always easy.

One way to do it: At the next safety training session, split workers up into small groups. Then give each group a gory picture of a workplace accident/injury.

Then ask workers to act as accident investigators.

Have them figure out how the accident happened and ways it could've been prevented. Get each group to share their answers with everyone at the end.

It'll make workers think hard about safety – and help your safety message sink in.

[Read more Training Tips in your Membership Dashboard](#)

WORKERS' COMPENSATION

3 things you need to know about remote worker injuries and workers' compensation claims



by Merriell Moyer

Don't let work-from-home injuries become a workers' comp nightmare



Despite its advantages for both employees and employers, remote work has some drawbacks, including headaches when it comes to workers' compensation claims.

While there has been some employer pushback against it, work-from-home hasn't disappeared and it's not likely to ever completely go away. That means there's still a likelihood that a remote worker could get injured while on the job, even though they're not technically in the workplace.

That can make workers' compensation cases involving remote workers a bit tricky.

This begs the question, "Are at-home injuries suffered by remote

workers covered under workers' compensation?"

"The short answer is that most at-home injuries suffered in the course of an employee's job duties are covered under the Worker's Compensation Act," attorney Brandon Jubelirer said in a blog post for the State Bar of Wisconsin.

Jubelirer, who specializes in workers' compensation law in the state of Wisconsin, was quick to add that "workers' compensation insurers can be quick to deny at-home injury claims."

With that in mind, here are three important things to keep in mind when dealing with work-from-home injury cases involving workers' compensation claims:

1 5 legal elements apply whether injury was at work or in home

Under the Wisconsin Workers' Compensation Act, the same five legal elements apply whether the injury occurs at home or in the employer's physical workplace. Those five elements are:

- the existence of an employer-employee relationship
- a physical or mental injury
- the injury occurring in the course of employment
- the injury arising out of the worker's employment, and
- the injury can't be self-inflicted.

If an injured employee meets that criteria, no matter where they were working at the time, then they qualify for workers' compensation benefits.

2 Remote worker injuries face a higher level of scrutiny

However, a work-from-home injury claim is going to face increased scrutiny by the workers' compensation insurance carrier. That's why these injuries need to be reported immediately and must be thoroughly documented by the injured employee.

Because of this higher level of scrutiny, employees must:

- notify the employer of the work-related injury immediately (this can't be stressed enough)
- seek medical help promptly, and
- cooperate with the workers' compensation insurer.

Obviously, the insurer is going to question a lack of evidence or a delay in reporting. After all, they don't want to, and shouldn't have to, pay for an injury that isn't work-related.

That means the insurance company is also likely to question whether the employee was hurt while in the course of their employment. If the worker was deviating at all from their normal job duties when the injury occurred, then the claim is likely going to be denied since that deviation probably led to the injury.

3 The big question: Did the worker deviate from their job duties?

For example, if Jane Smith was entering data from home and a sudden thunderstorm occurred, she's not likely to get benefits if she tripped and fell while trying to get her lawn furniture into the garage before it blows away. In this scenario, Jane deviated from her job duties and was hurt while performing a personal task.

On the other hand, if Jane had been entering data and then slipped and fell on her rain-soaked driveway while on the way to a meeting with a client, she may get benefits since the client meeting is job-related.

Jubelirer offered these hypothetical examples of employee deviations:

- leaving your desk to go play with your young child
- taking a short break to help your school-aged child with remote-learning
- getting intoxicated while still on the clock, and
- getting in a motor vehicle accident while running a personal errand.

"The injury while working from home must be directly connected to the employee's job duties," Jubelirer said. That comes with a few key exceptions, including:

- the course of employment isn't broken during lunch or designated breaks agreed upon by the employer, and

- short breaks to use the restroom, grab a drink or snack to take back to the work station or "any other brief action taken for 'personal comfort'" doesn't break the course of employment.

In work-from-home injury cases, each alleged deviation depends on the specific facts of a case, according to Jubelirer. That means "poor judgment and negligence do not always arise to the level of a deviation."

If whatever the employee was doing when the injury occurred arguably benefited the employer's interests, then it probably won't count as a deviation.

[Read this story online](#) 

Machinery starts up with maintenance worker still inside: Communication snafu?



"Another day, another work order," grumbled Bob, a veteran maintenance worker at the Romanoff Construction company. "What's the matter here?"

Bob took a peek at the work order. "Material clog, of course," he said standing in front of a concrete mixer. He turned off the mixer at the control panel before taking a look inside the machine.

"Not so bad, I can take care of that pretty quickly," he said to himself. Just then a supervisor and another worker came toward the machine.

"Mixer is off-limits!" said Bob. "Maintenance!"

"OK," said the supervisor. "How long do you think it'll take?"

"Half hour, maybe a little longer," said Bob.

"I'll put up a sign," said the worker. A few seconds later he taped a sign saying UNDER MAINTENANCE on top of the control panel.

Neither Bob or any other plant employee tagged and locked out the circuit or de-energized the machine to ensure it couldn't start up.

'Me' becomes 'we' but co-workers weren't made aware

Bob sweated and grunted as he broke away pieces of concrete

with a hammer and chisel. "Whew!" he bellowed. "I'm not as young as I used to be."

Just then he heard a familiar voice yelling "Bob! Yo Bob!" It was Bob's co-worker and mentee Miguel.

"I'm in the mixer," said Bob. "How did the unloading go?"

"Good, good," said Miguel. "We got it all done. So I came to see if you needed a hand."

"Oh yeah? Thanks!" said Bob with a heavy sigh. "I could use your help. Just grab a hammer and chisel and climb on in."

The younger and more physically fit Miguel helped Bob chip away at the hardened concrete and bag it. The pair talked about their weekend plans as they got the concrete mixer clean and ready for use.

"This looks great," said Bob. "Just sweep up the rest of it into a bag. I'm dying of thirst, got to grab some water." Miguel nodded OK as Bob climbed out of the mixer.

Bob headed across the production floor to the water fountain. The worker who taped the sheet to the mixer and waved. "All good?" the worker asked.

Bob flashed the OK sign and continued toward the water fountain. The worker pulled the sign off the control panel and

started the mixer up, not realizing Miguel was still inside.

As the mixer roared to life, everyone nearby could hear agonized screams, then silence.

The 19-year-old worker died before emergency responders arrived to the accident.

Strict adherence to OSHA rules would've saved a young man's life

OSHA doled out five serious citations for the crushing fatality. The company failed to:

- implement energy control procedures (lockout/tagout) to prevent accidental startups
- follow confined space safety procedures
- make sure an attendant was always standing by before allowing work in a confined space, and
- train workers on LOTO.

The fines added up to \$245,546. A wrongful death lawsuit brought by the deceased worker's family will cost the company more.

[Read more Real Life Safety in your Membership Dashboard](#)

WORKERS' COMPENSATION

Can worker get benefits for respiratory issues possibly caused by years of chemical exposure?

 by Merriell Moyer

Court finds rare lung disease was likely caused by automotive paint



Were a worker's severe respiratory issues caused by decades of exposure to automotive paint or non-occupational allergies? Can he collect workers' compensation even if his doctors can't decide?

The Utah Court of Appeals upheld a decision from the state's Labor Commission finding that the worker's debilitating respiratory symptoms were caused by 30 years of exposure to "a veritable laundry list" of chemicals at work.

Automotive resin spilled onto his face and body

Bradley West worked as an autobody technician for BASF Corporation for more than 30 years. During that time, West held several different positions. In 2015, his role was as a trainer of other autobody technicians who were learning how to use BASF's paint system.

Throughout his time working for BASF, West was exposed to a host of chemicals and had been

diagnosed with industrial asthma in 1997 along with a deviated septum, sinus cyst, bronchitis and allergic rhinitis due to allergens.

On March 12, 2015, West was moving inventory from one BASF warehouse to another as part of his regular job duties. He reached up to a top shelf for a gallon can of industrial automotive resin, which he didn't realize had an unsecured lid. As he pulled the can down from the shelf, the lid fell off and the resin spilled onto his face and down his body.

Can worker get benefits for respiratory issues possibly caused by years of chemical exposure?

The incident left West with:

- burning in his eyes
- plugged sinuses
- runny nose
- congestion
- rashes on his face and arms, and
- significant coughing.

Most of these symptoms resolved over time, but the sinus congestion and runny nose persisted.

Continued exposure to aerosol paints, dust, chemicals

Following the incident, West continued to train other technicians on the paint system, which resulted in further exposure to chemicals and particulates. To protect his lungs, West wore an air-supplied hood respirator, a paint suit, nitrile solvent resistant gloves and safety boots anytime he anticipated that he would be exposed to chemicals and dust.

However, he would “frequently walk through auto shops without the safety apparatus when looking for a painter or manager and, as a result, was exposed to whatever was in the air while doing so.”

In October 2015, West reported to his doctors that he’d been exposed to an increased amount of aerosol paints and chemicals as part of his job duties. He continued to have a cough and sinus congestion, but he thought it was from seasonal allergies. His symptoms worsened in November 2015, leading him to seek medical treatment for what he thought was just a cold.

Over the next three months, West’s symptoms continued to get worse,

leading to difficulty breathing, cough, congestion, runny nose, sinus pain and clogged ears.

In March 2016, during a product demonstration at work, West had a two-hour coughing fit that caused him to lose consciousness twice.

Diagnosed with rare respiratory disorder

Further medical testing led to a diagnosis of interstitial lung disease with an unclear cause. In April 2016, a biopsy indicated West was suffering from chronic eosinophilic pneumonia. This is a rare disorder that involves a “massive accumulation” of a certain type of white blood cell in the lungs, according to the National Organization for Rare Disorders.

The doctor who diagnosed West with interstitial lung disease reported that his condition was likely the result of “occupational exposure in the auto industry.” In August 2016, the director of the Interstitial Lung Disease Program at the University of Utah reported that West’s condition was due to his decades of chemical exposures, especially isocyanates. These chemicals are “powerful irritants to the mucous membranes of the eyes and gastrointestinal and respiratory tracts,” according to the National Institute for Occupational Safety and Health.

By December 2016, West’s health was still declining, leading him to file for workers’ compensation benefits for the March 2015 resin incident and for occupational lung disease.

Conflicting opinions lead to medical panel review

From May 2017 through January 2018, multiple doctors for both

West and BASF produced conflicting reports as to the cause of West’s respiratory problems. Some doctors blamed West’s years of chemical exposure at work while others felt there was insufficient evidence connecting the lung disease to his occupation.

In August 2018, an administrative law judge overseeing the workers’ compensation claim referred the case to a medical panel for review. The panel consisted of doctors who were experts in respiratory illnesses.

The medical panel explained that “there is no scientific consensus concerning whether isocyanate exposure” could cause chronic eosinophilic pneumonia. Despite that fact, the panel found occupational “causation in this case to be strongly possible.”

The judge adopted the medical panel’s conclusions in July 2020 and ordered BASF to provide compensation for past and future medical expenses associated with West’s condition along with total disability compensation.

Company demands review by second medical panel

BASF requested that the Utah Labor Commission review the judge’s order, arguing that the judge erred because the medical panel didn’t reach a conclusion of medical probability regarding cause. On review, the commission explained that the circumstances of the case left it “with the unusual scenario of having to make a determination on medical causation for an uncommon condition that even the medical panel did not fully comprehend.”

The commission ordered the judge to remand the case to a second medical panel. This panel, which

consisted of a different set of medical experts who specialized in respiratory health, found that West's "occupational disease is largely ... attributable to industrial causes." Further, the panel found that "occupational exposure permanently worsened West's chronic sinopulmonary disease." It explained that West had "low personal risk factors for developing non-industrially related" lung disease, such as no exposure to animal allergens, no exotic travel history and no history of smoking.

BASF objected to the second panel's report, but the judge found that the evidence supported the determination that West's disease was occupational in nature. The judge again ordered BASF to compensate West for medical expenses and provide total disability benefits.

Court: Prior decisions supported by 'clear, reasoned explanations'

On review with the Utah Court of Appeals, BASF argued that both the judge and the commission erred in concluding that the second medical panel's opinion provided the proper level of medical probability as to the cause of West's condition.

The appeals court disagreed, finding that the judge and the commission "provided detailed explanation as to why their review of the record with the support of the medical panel reports left them convinced that West's repeated exposure to isocyanates through his regular course of employment was the cause of his condition."

While both medical panels acknowledged a lack of medical agreement about whether isocyanates can be the medical

cause of chronic eosinophilic pneumonia, the second panel didn't rely solely on scientific consensus. Causation was supported "by the second panel's review of the facts in West's case coupled with its expertise in the fields of pulmonary and occupational diseases," according to the court.

The court found that the judge and the commission referenced West's work history, his 2015 resin incident, working conditions and medical reports in their decisions. "From their review, they drew clear, reasoned and supported inferences and provided detailed explanations for their conclusions," the appeals court stated.

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Electrocution of lineman leads to \$45K OSHA fine for contractor

Electrocution of lineman leads to \$45K OSHA fine for contractor

A Pennsylvania contractor was fined more than \$40,000 following the electrocution of a 32-year-old lineman working at a Florida jobsite.

OSHA investigators determined that the lineman was in a digger derrick truck parked beneath energized overhead power lines. Other workers began operating the truck's boom to unload a metal crossbeam, causing the boom to contact a 7,620-volt power line.

That contact sent electricity coursing through the truck and into the surrounding ground. The lineman jumped from the truck and was electrocuted.

Fine: \$40,937

Company: Concurrent Group LLC, Blue Bell, Pennsylvania

Business: Electric power distribution

Reasons for fine:

Five serious violations for failing to:

- operate mechanical equipment around power lines so that minimum approach distances were maintained
- ensure energized parts were insulated when conductive objects were taken closer by employees
- ensure that a designated employee other than the equipment operator observed the approach distance to exposed lines
- ensure that employees were protected from mechanical equipment contact with energized lines
- maintain programs allowing frequent and regular inspections of the job site

[Read more Who Got Fined & Why in your Membership Dashboard](#) 

Training Tips



Use a chicken to prove electrical safety matters

Got a good electrician in the house? Then put him or her to work making an electric chicken sizzler.

It's a simple device that runs current through a chicken leg.

The chicken will sizzle, pop and burn – just like human flesh.

The safety point: Exposure to electrical current can fry you!

Safety managers say workers respond to the visual because it's all too easy to see their own skin getting zapped.

Caveat: If you've got a vegetarian or vegan on staff, you may want to skip this training demonstration!

[Read more Training Tips in your Membership Dashboard](#) 



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



Merriell Moyer

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 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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