

News & Training SafetyAlert

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January 2024

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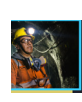
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News Briefs

Safety Stories You Might Have Missed

Injured driving his company vehicle to work for supplies: Can he collect workers' compensation?

Is a worker who was injured in a crash while driving a company vehicle to work for supplies entitled to workers' compensation benefits?

The New Jersey Supreme Court upheld an appeals court decision that granted the worker benefits, finding that since he was in a company vehicle and going to the shop specifically for supplies his injuries were work-related.

Company vehicles could be kept at home

Henry Keim worked as a pest-control technician for Above All Termite & Pest Control.

The company provided Keim with a vehicle for work use. Above All had a policy that allowed its technicians to keep their work vehicles at home. That allowed them to travel from their residences directly to the company's various worksites before returning home at the end of their shifts.

Supplies kept in vehicles overnight were limited

Above All had another policy that limited the amount of supplies technicians could keep in their company vehicles overnight. When they needed more supplies, technicians were required to drive to Above All's shop, collect what they needed and then travel to their first worksite of the day.

On the morning of a date that wasn't provided in the court records, Keim clocked in from home, received his schedule and determined that he didn't have enough supplies in his company vehicle. On his way to the shop for supplies, he was injured in a crash.

Judge said he was 'merely commuting to work'

Keim filed a workers' compensation claim, which Above All contested. A Judge of Compensation dismissed the claim, finding that Keim was "merely commuting to work when he sustained injuries."

In front of an appeals court, Keim argued that he was in the course of his employment when he was injured and should receive workers' compensation benefits. The court agreed, ruling that the "authorized vehicle rule" applied because Above All authorized a vehicle for Keim to operate and his operation of that vehicle

when the crash occurred was for business authorized by the company.

Authorized vehicle rule meant he could collect benefits

The New Jersey Supreme Court agreed with the appeals court's reasoning and upheld the decision to allow Keim to collect benefits on Nov. 21, 2023.

The authorized vehicle rule said that employment of any employee who used an employer authorized vehicle commenced and terminated with the authorized operation of that vehicle on business authorized by the employer.

This rule doesn't apply every time an employee uses the vehicle and doesn't apply when the employee is simply commuting to work.

In Keim's case, he met every one of the "authorized" provisions of the rule because he was:

- using a company vehicle he was authorized to use
- authorized to keep it at home and operate it to drive directly to jobsites, and
- authorized to travel to the shop for supplies before driving to his first jobsite of the day.

In short, he wasn't simply commuting to work when he was injured in the crash. He was traveling on company business to collect materials needed to do his job, which meant his injuries were sustained in the course of his employment, according to the court.

West Virginia coal mine slapped with imminent danger order for 4 unwarrantable safety failures

A West Virginia mine was cited for 12 violations, including four labeled as unwarrantable failures for coal dust accumulations and inadequate workplace examinations, leading to an imminent danger order.

The Longview Mine in Volga, West Virginia was also cited by the U.S. Mine Safety and Health Administration (MSHA) for three significant and substantial, or S&S, violations related to fall hazards.

Unwarrantable failures are violations that involve aggravated conduct that constitutes more than ordinary negligence. S&S violations are what MSHA considers “reasonably likely to cause a reasonably serious injury or illness.”

Imminent danger orders allow MSHA to pull miners from a specific area of a mine until hazards have been properly addressed.

Inspectors find explosion hazards, inadequate workplace exams

In Longview's case, MSHA inspectors found:

- accumulations of float coal dust, an explosion hazard, on two conveyor belt lines
- inadequate examinations on the same two conveyor belt lines, and
- two contractor miners who were wearing fall protection harnesses while working 20 feet above ground without tying off as required.

Longview was targeted by MSHA for an impact inspection in October 2023 because of its “history of accidents and inadequate examinations.”

MSHA has placed a priority on workplace examinations because inadequate exams have been identified as root causes in several mining fatalities in 2023.

2023 impact inspections identify 2,307 violations

The agency completed impact inspections at 13 mines in 10 states in October 2023, issuing 215 violations. These inspections have identified 2,307 violations so far in 2023, including 654 S&S and 46 unwarrantable failures.

Impact inspections are conducted at mines “that merit increased agency attention and enforcement due to poor compliance history; previous accidents, injuries, and illnesses; and other compliance concerns.”

“The October 2023 impact inspections show miners’ safety and health continues to be put at risk and in ways that are completely preventable,” said Assistant Secretary for MSHA Chris Williamson. “We remain troubled and concerned with the continued trend in our impact inspections. This trend include inspectors finding violations that put miners’ lives at risk, such as float coal dust, improper fall protection and a lack of adequate workplace examinations.”

Injured construction worker wins Labor Law case for fall from stacked scaffolding on flatbed truck

A New York construction worker was granted summary judgment for his Labor Law claim stemming from his trip and fall from scaffolding materials stacked onto a flatbed truck.

The Appellate Division, First Department upheld a lower court decision granting summary judgment to the worker who the courts said proved that a group of contractors was liable for his injuries.

He tripped over a board, fell 18 feet to sidewalk

Lupo Agurto Jr. was working at a construction site operated by One Boerum Development Partners LLC, Maga Contracting Corp., Rock Group NY Corp. and Nordest Services LLC.

Agurto was injured when he fell from the top of scaffolding materials that were stacked on the back of a flatbed truck. The materials were stacked so that the top was about 18 feet off the ground. Agurto was walking on the materials when he tripped over a board and fell to the sidewalk below.

While Agurto was wearing a fall protection harness at the time there was nothing for him to tie off to on the back of the truck.

Lack of device to tie off to leads to summary judgment

Following the incident, Agurto filed a Labor Law claim arguing that his injuries were caused because the contractors running the construction site failed to provide him with a proper safety device to prevent his fall from the truck.

A lower court agreed and granted him summary judgment.

On appeal, the Appellate Division, First Department upheld the lower court’s decision, determining that Agurto had provided sufficient evidence to prove that the contractors failed to provide him with a safety device and were liable under the provisions of the Labor Law.

The appeals court also sorted through the liability of each contractor involved, with each one filing cross-claims regarding contractual obligations and insurance coverage against the others.

OSHA renews Regional Emphasis Program on workplace noise in mid-Atlantic states

OSHA recently renewed its Regional Emphasis Program on workplace noise and worker hearing loss in the mid-Atlantic region.

The agency renewed the program, which was first established in 2018, to focus its efforts on manufacturing industry employers in Delaware, Pennsylvania, West Virginia and the District of Columbia for five more years.

Sawmills, ornamental metal products sectors added to program

Three manufacturing industry sectors were also added to the program after data showed that they presented a higher risk of noise exposure. The new sectors are sawmills and wood preservation, other wood manufacturing, and ornamental and architectural metal products.

“We renewed our Regional Emphasis Program for High Level Noise to continue to remind manufacturing industry employers ... that federal safety standards for noise protection must be followed to protect workers from unnecessary and potentially permanent harm,” OSHA Regional Administrator Michael Rivera said.

Hearing loss a hazard for 22 million U.S. workers

Hearing loss is a common workplace health concern that is a hazard for about 22 million U.S. workers, according to OSHA. The Bureau of Labor Statistics found 12,000 workers suffered work-related hearing loss in 2021 with 9,700 of those workers employed in the manufacturing industry.

OSHA requires employers to have a hearing conservation program when the average noise exposure over eight working hours reaches or exceeds 85 decibels. That’s comparable to the sound of city traffic or a gas-powered leaf blower.

Nevada OSHA adopts Severe Violator Enforcement Program

Nevada’s state plan OSHA has adopted its own version of federal OSHA’s Severe Violator Enforcement Program (SVEP) to target employers who make willful, repeat or failure-to-abate violations.

The state plan OSHA initially announced its intention to create the SVEP in October 2022 and began publicly tracking employers placed in the program in October 2023.

Federal OSHA’s SVEP has been around since June 2010 but state plan states “have resisted enforcement of an SVEP program in their own jurisdictions” until recently, according to law firm Snell & Wilmer.

Criteria for being placed into the program

The state agency will place employers in the SVEP for citations relating to fatal or catastrophic (FAT/CAT) incidents or inspections unrelated to such incidents.

For FAT/CAT incidents, an employer will be placed in the SVP for:

- a citation issued for at least one willful or repeat violation
- the issuance of a failure-to-abate notice based on a serious violation directly related to an employee death, or
- an incident causing three or more employee hospitalizations.

Criteria for being placed into the SVEP for a non-FAT/CAT incident involves any inspection:

- resulting in at least two willful or repeat violations, or
- where Nevada OSHA issues failure-to-abate notices based on the presence of high gravity serious violations.

Employers are placed in the SVEP when the citation is issued, Snell & Wilmer said. That means employers could be subject to the SVEP’s penalties even if the citation is contested and before it becomes a final order.

Employers in the SVEP will have their names published

Nevada’s SVEP is identical to federal OSHA’s, including that employers placed in the program will have their names published to the public and are listed in the Nevada OSHA severe violator tracking document mentioned above.

Publication of the employer’s name is considered one of the biggest penalties associated with the program along with additional mandatory inspections by Nevada OSHA.

Further, while it's "not discussed in any official OSHA literature, employers subjected to the (federal OSHA SVEP) report harsher monetary penalties for citations, and an unwillingness by OSHA to make settlement deals," according to Snell & Wilmer.

Once you're in, it's not easy getting out

Getting out of the SVEP once an employer is placed into it is difficult.

Nevada OSHA doesn't specify what steps an employer can take to get out of the SVEP, but Snell & Wilmer feel that it will match federal OSHA's SVEP in that regard.

To get out of the federal OSHA SVEP, employers:

- aren't eligible for removal until three years after abatement of a violation is completed
- must abate all SVEP-related hazards
- must pay all penalties that are considered final
- must complete all settlement provisions
- must receive no additional serious citations related to the hazards that resulted in placement in the SVEP, and
- must complete one follow-up inspection by OSHA.

There's also a two-year track that involves the employer having to agree to create a Safety and Health Management System and verification of the safety program by a third-party safety expert.

Failure to lockout/tagout belt conveyor leads to worker's fatal fall

A 60-year-old worker with 28 years of experience was killed when he fell 16 feet from a belt conveyor that activated while he was performing maintenance because lockout/tagout procedures weren't performed.

Investigators with the Mine Safety and Health Administration (MSHA) found that the employer failed to ensure the belt conveyor was de-energized and blocked against hazardous motion before maintenance was performed.

MSHA also found that the employer failed to provide safe access to certain parts of the belt conveyor.

Machine cycled on as he was climbing onto it

On June 8, 2023, David Ayick was working at the Boro Sand & Stone Corp. North Attleboro Plant. The plant is a surface mine located in Bristol County, Massachusetts that crushes, processes and stockpiles crushed stone for sale to the construction industry.

Ayick spent his shift performing his regular duty of operating the process plant. At 4:06 p.m., he shut down part of the process plant to perform maintenance on the Eriez Magnet Belt Conveyor. Shutting down the plant wasn't a normal part of Ayick's job duties.

Surveillance camera footage showed Ayick walking up the belt conveyor's catwalk and climbing onto the conveyor. He proceeded down an inclined stretch of the conveyor and then climbed on top of the machine, which automatically cycled on and caused him to fall 16 feet to the ground below.

At 4:07 p.m., a truck driver was walking toward the process plant when he heard Ayick yell and then saw him fall from the running belt conveyor. The driver ran to Ayick's location and called 9-1-1 after finding him unresponsive.

Ayick was transported to the hospital via medical helicopter. He was pronounced dead from his injuries the following day.

Parts of conveyor were shut down but not locked out

MSHA investigators discovered that the belt conveyor was controlled by a timer that caused it to cycle on automatically and without warning every 10 minutes.

There was no written procedure for performing maintenance and repairs on the belt conveyor and no safe means of accessing the area Ayick was attempting to reach when he fell.

The employer said workers could access that area of the conveyor using a ladder and fall PPE tied off to a cable on an I-beam, which investigators were unable to locate. There was also a personnel lift available, but the employer said it wasn't usable to access the section of the conveyor in question.

Investigators found that the mine's lockout/tagout procedure was posted in the conveyor's electrical room along with a lock and tag that was available for use. MSHA determined that Ayick did shut down parts of the conveyor on his way to the section he was going to service. However, he didn't shut down the stretch he fell from and didn't lock out or tag out the disconnect.

Employer didn't assign worker to repair equipment

While there was evidence that Ayick received lockout/tagout training and annual refresher training, investigators determined that he received no training on how to safely access the part of the belt conveyor he was trying to access when he died.

The employer told investigators that Ayick wasn't assigned to perform maintenance on the equipment and it insisted it had no awareness that he was going to perform the task.

Failure to lockout equipment, lack of safe access caused incident

MSHA determined that the root causes of the incident were the employer's failure to:

- ensure the belt conveyor was de-energized and blocked against hazardous motion before maintenance was performed, and
- provide safe access to the section of conveyor in question.

Following the incident, all employees were retrained on lockout/tagout procedures and blocking machinery and tools against hazardous motion before performing maintenance.

As for the safe access issue, the employer developed a new written procedure on the process and installed work platforms with ladders. Employees were then trained on the new procedure.

Judge holds roofing company owner personally responsible for \$160K OSHA fine

A federal judge is holding a New Hampshire roofing company owner personally responsible for more than \$160,000 in OSHA fines and attorneys' fees.

Barry Billcliff, the owner of Merrimack Valley Roofing and other alleged businesses, claimed he wasn't an employer under the Occupational Safety and Health Act and therefore couldn't be held responsible for safety violations OSHA found on a multi-employer worksite.

The administrative law judge with the Occupational Safety and Health Review Commission found Billcliff's testimony wasn't credible, ordering him to pay \$162,274 in fines and \$3,215 in attorneys' fees.

He used aliases, other corporate names to evade accountability

OSHA cited Merrimack Valley Roofing for six fall protection violations found at the multi-employer worksite. Billcliff contested the citations, arguing that he wasn't technically an employer and didn't have sufficient connection to the worksite to be held responsible as a controlling employer for the violations.

Following the hearing, the judge determined that Billcliff:

- unsuccessfully tried to evade accountability by using aliases and doing business under multiple other corporate names
- had no evidence of a valid, registered corporation or limited liability company relevant to the jobsite and was personally liable for the OSHA fines
- was a controlling employer under OSHA's multi-employer policy
- was required to take reasonable measure to protect workers at the jobsite, including subcontractor employees
- repeatedly lied during both the OSHA inspection and hearing, and
- was evasive about the bank account used for deposited payments for roofing work, which the judge said showed additional evidence that he willfully exposed workers to fall hazards.

Judge increased cost of fine based on dishonest conduct

The judge also:

- rejected Billcliff's claim that he lacked sufficient connection to the jobsite
- upheld the fall protection violation as willful, noting that Billcliff didn't take any safety measures to protect workers despite his years in the roofing industry and a past OSHA fall protection violation
- ordered Billcliff to pay OSHA fines that were greater than originally proposed after taking into account his dishonest conduct, and
- sanctioned Billcliff for not complying with legal obligations regarding his bank records.

If Billcliff doesn't file an appeal, the judge's order will be considered final on Dec. 13, 2023.

Worker who blamed fall on ladder's placement gets summary judgment on Labor Law claim

A worker injured in a fall from a ladder was granted summary judgment on his New York Labor Law claim despite his co-worker's testimony that the worker caused the fall himself.

The New York Appellate Division, Fourth Department affirmed a lower court decision finding that the worker's injury was due mainly to the ladder's placement and only in small part by his own negligence.

Ductwork slips from his hand, strikes ladder

Joseph Calloway was working for a contractor installing a new plumbing, heating and cooling system in a property owned by American Park Place Inc. and leased to Iron Smoke Whiskey LLC.

Calloway and his co-worker were removing the original ductwork, which were placed in long strips and held up by straps. The two workers would first remove the straps then carry the ducts, which they rested on their shoulders, down their respective ladders.

On the day of the incident, Calloway was on his ladder when a duct that was being removed from its straps slipped from his hand, hit a wall and then struck his ladder. The force of the duct hitting the ladder caused Calloway to fall.

Owners claim ladder wasn't defective

Following the incident, Calloway filed a Labor Law claim against Park Place and Iron Smoke arguing that the ladder had been placed improperly, which led to his fall. The two businesses claimed that the ladder had no defects and the incident was solely Calloway's fault.

A lower court agreed with Calloway and granted him partial summary judgment on Jan. 13, 2023, leading to an appeal from Park Place and Iron Smoke.

Co-worker's testimony proved 'at most, contributory negligence'

The Appellate Division, Fourth Department determined on Nov. 17, 2023 that the lower court didn't err in granting Calloway summary judgment.

According to the court, Calloway proved that the ladder was placed in a way that didn't give him proper protection. That shifted the burden of proof to the two

businesses who were then required to show proof that Calloway's own conduct caused his fall.

Park Place and Iron Smoke argued that the ladder was functional and in good condition. However, the court said that wasn't relevant to the question of whether or not it was properly placed.

The two businesses also presented testimony from Calloway's co-worker who claimed that "he believed that the duct fell due to (Calloway's) failure to hold it securely and that (Calloway) then fell due to his failure to keep his balance." That only "established, at most, contributory negligence" on Calloway's part, according to the court, because Calloway had already proven the ladder's placement caused his fall.

Organization issues safety alert on tractors due to high number of deaths since 2001

When most people think about tractors they likely think about farmers in fields of wheat or corn. While tractors are commonly seen on farms, they're also often found on non-agricultural worksites in a variety of functions.

Like any other piece of heavy equipment, tractors can be dangerous. Since 2001, there have been 199 tractor-related deaths in Michigan alone, with 85% of those deaths occurring in agriculture.

8 tractor-related deaths in Michigan in 2021

There were eight tractor-related deaths in Michigan in 2021, according to the Michigan State University Department of Occupational and Environmental Medicine. The department recently issued a safety alert regarding tractors because of the number of tractor-related incidents in the state. It also issued a separate alert regarding skid steer loaders.

The incidents that led to the safety alert included:

- a farm hand who died when he attempted to use a tractor with a loader bucket as a bulldozer to push a fallen tree out of a field, resulting in the tree rolling over the bucket and striking the farm hand
- a farmer who was killed when her clothing became entangled in the unguarded rotating power take off (PTO) shaft of a tractor she was using to power a corn elevator

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- a farmer who died when his tractor was struck by vehicle while traveling on a public road, and
- a student who was killed when the tractor she was using to pull out a stuck tractor overturned to the rear, pinning her.

They're 'not constructed to safely free stuck equipment'

To prevent tractor-related incidents, the safety alert recommends:

- not using tractors other than for their intended use because failure to do so could create unsafe work conditions
- that owners and operators should ensure the tractor size and capacity is appropriate for the intended task
- that operators leave visual clues identifying edges of ditches or depressions to prevent side overturns
- reading and following the safety guidelines in the tractor's owner's manual
- retrofitting tractors manufactured before 1976 with rollover protection structures (ROPS) and seat belts
- always wearing the seat belt during operation in a ROPS-equipped tractor, and
- never starting tractors while standing on the ground.

Also keep in mind that "tractors are not constructed to safely free stuck equipment." However, if an operator chooses to use a tractor for this task despite the hazard, then the towing tractor should be hitched at its front end to the front end of the stuck equipment. Then the operator should "slowly and deliberately" drive the towing tractor in reverse with a "slow and steady" pull.

OSHA gives the gift of cold weather guidance for workers and employers during the winter months

OSHA released some online guidance related to winter weather and reminding employers to make

sure their workers dress appropriately if they're required to work in cold temperatures.

The agency posted a guide to winter weather safety on the front page of its website in early December 2023.

Like the Mine Safety and Health Administration's November 2023 post on winter weather safety for miners on its website, OSHA offers a variety of tips ranging from training workers about cold stress injuries to engineering controls that employers can use to help keep their employees warm.

Law firm Seyfarth Shaw, commenting on the guidance, points out that "when combined with metabolic heat and indoor occupational heat sources, the heavy PPE, in addition to jackets and hats worn for cold weather can also create heat illness risks that also must be addressed and managed."

This is a good point to keep in mind as the focus in the winter months typically shifts solely to cold temperatures.

Best practices on how to dress to combat the cold

The guidance goes into a lot of detail specifically about protective clothing for cold weather and how employees should dress to combat low temperatures.

OSHA reminds employers that they are responsible for providing workers with PPE when required by federal standards. However, the agency points out that there is currently no requirement for employers to provide the ordinary clothing used "solely for protection from weather." Despite the lack of a requirement, the agency mentions that "many employers provide their workers with winter weather gear such as winter coats/jackets and gloves."

In short, there's no federal requirement that forces employers to provide winter clothing to workers, but some employers go the extra mile and do so anyway.

What are the best practices for how workers should dress against cold weather if there is no way for them to avoid the hazard?

OSHA suggests:

- wearing at least three layers of loose fitting clothing, with an inner layer meant to keep moisture away from the body, a middle layer for insulation and an outer layer to protect against wind, snow and rain
- avoiding tight clothing, which reduces blood circulation and keeps warm blood from efficiently being circulated to the extremities

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- wearing a knit mask to cover the face and mouth, if necessary
- wearing a hat that will also cover the ears as hats reduce the amount of body heat that escapes through the head and helps keep the whole body warmer
- using insulated glove to protect the hands, and
- wearing insulated, waterproof boots to protect the feet.

A few tips specifically for workers

Some other cold weather safety tips OSHA offers specifically for workers include:

- making sure the employer trains workers on the symptoms of cold stress
- dressing appropriately for the cold
- staying dry in cold weather because moisture from sweating or rain and snow can increase the rate of heat loss from the body
- keeping extra clothing, including underwear, handy in case the worker does get wet
- drinking warm sweetened fluids, but not alcohol, and
- using proper engineering controls, safe work practices and PPE provided by the employer.

Owner of poultry facilities in trouble with feds for teen worker safety must pay \$3.8M

In October 2023, the owner of three California poultry facilities was in trouble with the U.S. Department of Labor (DOL) for employing teen workers in dangerous occupations. Now he and his company must pay \$3.8 million.

Tony Bran, the owner of The Exclusive Poultry Inc., agreed to pay almost \$3.8 million in back wages, damages and fines after a DOL investigation found the company recklessly endangering teen workers at facilities in Southern California.

Of that \$3.8 million, Bran and his company must pay \$3.5 million in back wages and damages to affected workers, \$300,000 in punitive damages and \$100,614

in back wages. Another \$201,104 is for fines related to willful violations of federal child labor regulations.

Under the consent judgment, Bran and The Exclusive Poultry must also retain a monitor for three years to ensure compliance and to show a preference for rehiring workers who were fired in retaliation for aiding in the investigation.

Consent judgments against associated companies also obtained

Wage and Hour Division investigators determined that Bran, Karen Rios, Juan Valtierra, Javier Meza and Jacqueline Garcia operated their companies as a single enterprise made up of The Exclusive Poultry Inc., Valtierra Poultry LLC and Meza Poultry LLC.

However, a Dec. 4, 2023 DOL news release mentions only Bran by name and refers to the others as “related companies.” It does specify that consent judgments against these companies and their owners were also obtained by the DOL.

Teens employed to use sharp knives, operate forklifts

The investigation found children as young as 14 employed to debone poultry with sharp knives and operate forklifts to move pallets. These teen workers were also allowed to work excessive hours in violation of federal child labor laws. Further, investigators learned that the company retaliated against its employees for cooperating with the investigation by cutting their wages.

When the child labor violations were substantiated by investigators, the DOL obtained a temporary restraining order and an injunction to prevent Bran and his company from shipping “hot goods” produced in violation of the Fair Labor Standards Act.

Bran’s customers include Grocery Outlet, SYSCO Corp., ALDI, Nestle Purina, Royal Canin USA Inc. and Ralph’s Grocery Company, which is a subsidiary of The Kroger Company, according to the DOL.

“Downstream distributors and customers such as these can take steps to clean up the industry and protect themselves from potential liability by requiring written assurance from producers, manufacturers and other dealers that the goods being produced and purchased by them have been made in compliance with the requirements of the FLSA,” the DOL said in the news release.

Part of an ongoing effort against child labor violations

The consent judgment against Bran and The Exclusive Poultry is part of an ongoing effort by the DOL to combat

child labor violations and wage theft in the poultry and meat processing industries.

In February 2023, the DOL assessed \$1.5 million in fines for child labor violations against Packers Sanitation Services Inc., which employed at least 102 teen workers in dangerous occupations at meat processing facilities in eight states.

This is all part of an interagency child labor task force that concluded 765 child labor cases between Oct. 1, 2022 and July 20, 2023 alone, finding 4,474 children employed in violation and resulting in more than \$6.6 million in fines in that period of time.

Contractor sentenced to 2 years of probation for workers' compensation fraud

A Minnesota contractor was sentenced to two years of probation and a lifetime ban on applying for state and federal contracts after being found guilty of workers' compensation fraud.

Nelson Lopez Giron, the owner of Giron Construction, was sentenced Dec. 4, 2023 on felony charges of workers' compensation insurance fraud.

Lopez Giron committed fraud by lying about his payroll and denying insurance benefits to an injured worker.

Owner told insurance company he didn't know injured worker

An investigation into Lopez Giron and his company began in April 2023 following his refusal "to help a construction worker who was seriously injured when a nail struck his eye," according to the Minneapolis Star Tribune.

In October 2023, Lopez Giron admitted that he lied to his insurance company about knowing the worker and said that he denied having any employees so he could lower his insurance costs.

When the employee's eye was injured, Lopez Giron allegedly offered the worker some eye drops and told him not to tell doctors where or how he got hurt. The worker received medical care at a hospital and filed a workers' compensation claim. When his insurance company contacted him, Lopez Giron said he didn't know the employee, which led to a denial of benefits.

Investigators found that Lopez Giron Construction should have been paying more than \$20,500 per year in premiums for the approximately 15 workers he employed. Instead, he was paying \$671 for a barebones policy.

"Mr. Lopez Giron tried to cut corners and not play by the rules by which most other business owners play. His employee paid the price for his conduct," Hennepin County Attorney Mary Moriarty said. "Workers' compensation insurance is a critical protection that workers expect to be there if they are injured on the job."

NIOSH: Don't forget that chemicals can also cause hearing loss

Everyone knows that loud noise is what leads to hearing loss. However, most people don't realize that chemicals can also cause an individual to lose their hearing.

The National Institute for Occupational Safety and Health (NIOSH) wants more people to know that mishandling certain chemicals can cause damage to the human ear, leading to hearing loss.

Ototoxicants cause damage to the ear

In its December 2023 eNewsletter, NIOSH pointed out that hearing loss is the third most common chronic physical health condition among adults in the U.S. The organization also said that not all of those cases of hearing loss were caused by workplace noise.

Chemicals known as ototoxicants can cause damage to different parts of the ear resulting in hearing loss or noise sensitivity.

Exposure can occur from breathing in ototoxicants or consuming food or drinks contaminated with the chemical. When exposure occurs, ototoxicants travel through the bloodstream where they can injure the ear and damage nerves that transmit information to the brain.

These chemicals are common and include:

- solvents
- degreasers
- fuels
- mercury
- lead

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- tobacco smoke
- pesticides, and
- cancer-treating drugs.

Consulting toxicological profiles, using PPE can aid in prevention

The U.S. Centers for Disease Control and Prevention (CDC) Toxicology Profile webpage is a good source for checking whether a certain chemical is an ototoxicant. Simply find the chemical of interest and read its “Health Effects” section.

Obviously, if workers are exposed to both loud noise and these chemicals, this could lead to more severe damage than exposure to either one alone.

To prevent ototoxic chemical exposure, NIOSH suggests:

- reading and following all requirements on each chemical’s toxicological profile
- wearing PPE such as chemical-resistant gloves, long sleeves and eye protection as needed, and
- considering all the risk factors and how to control them.

If noise is also a hazard, then hearing PPE should be worn as well.

The NIOSH noise and occupational hearing loss webpage has more information about protecting workers from ototoxic chemicals.

OSHA launches Regional Emphasis Program to protect landscaping, horticultural workers

OSHA launched a new Regional Emphasis Program (REP) dedicated to protecting workers in the landscaping and horticultural industries in four western states and three Pacific territories.

The program was launched to stem rising fatality rates in both industries.

From 2011 to 2021, there were 1,072 work-related fatalities in these industries, according to Bureau of Labor Statistics data. In 2021, there were 234 worker deaths, which exceeded the national average for

fatalities, injuries and illnesses in other industries. That’s what prompted OSHA to start this program.

Landscaping and horticulture workers face a variety of hazards every day on the job, including:

- amputation
- falls
- electrocution
- excessive noise
- heat illness
- ergonomics injuries
- dangers associated with motor vehicles and machinery
- chemical exposures, and
- harm caused by animals and insects.

The new REP covers employers in Arizona, California, Hawaii and Nevada as well as American Samoa, Guam and the Northern Mariana Islands.

This program will see OSHA conducting safety and health inspections on employers in both industries with a focus on tree care and related services, including:

- tree and bush planting
- pruning
- bracing
- spraying
- removal and surgery
- commercial lawn and landscape maintenance, and
- utility line tree-trimming services.

2 unions request federal OSHA take over South Carolina State Plan

A pair of unions asked federal OSHA to take over South Carolina’s State Plan because they feel that the state has failed to protect workers and hold employers accountable.

Service Employees International Union (SEIU) and the Union of Southern Service Workers (USSW) want OSHA

News Briefs — Safety Stories You Might Have Missed

to revoke South Carolina's State Plan, which they claim isn't "at least as effective" as the federal version.

Longer inspections, lower fines

South Carolina's WCSC Channel 5 News reports that representatives with the USSW are pointing out lackluster performance by the state, with "an average of four business weeks to investigate complaints compared to an average of 2.6 weeks for investigators in Virginia and 5.7 days in North Carolina."

Further, the union said that inspections aren't as thorough as federal OSHA's as the state "found 67% of worksites to be compliant in 2022 versus 44% nationally."

Fines for employers are also typically lower, with neighboring states having an average fine of \$2,000 compared to South Carolina's \$1,402.

Number of inspections '50% below federal expectations'

Meanwhile, representatives with SEIU told Fortune that the state doesn't conduct enough inspections. The union said that "totals fitting for a state economy of its size fell 50% below federal expectations in 2018."

The state "conducted 287 inspections in 2022, or about 1.9 for every 1,000 establishments — a figure the organization said is less than one-third the rate in the surrounding states of North Carolina, Tennessee and Virginia, as well as the national average."

Unions hope 'federal pressure will compel changes'

The unions hope "that federal pressure will compel changes like those seen recently in Arizona" where federal OSHA was considering revoking the State Plan. Arizona eventually announced that it would align its plan with OSHA's, causing the federal agency to reconsider the revocation.

In response to the union petition, South Carolina issued a statement to WCSC Channel 5 News, saying:

"South Carolina OSHA is a proud State Plan and is fully committed to its mission of making South Carolina a safe place to work and live for all employees. We are especially proud that we continue to have one of the lowest rates of employee injuries and illnesses in the nation among State Plans and Federal OSHA. It is important to note that SC OSHA follows Federal OSHA procedures in the enforcement of its State Plan. In addition to our enforcement program, we work cooperatively with employers, employees, associations and other groups to provide free safety and health

training and consultation. USSW is one of the groups SC OSHA has been meeting and working directly with over the past year."

Worker injured while diving for cover during an explosion can pursue Labor Law claim

A worker who was injured as he dove under his work truck when the top of a damaged utility pole exploded can proceed with his New York Labor Law claim.

The Appellate Division, Second Department partially revived the claim because it found there were triable issues of fact regarding whether or not the work being done qualified as maintenance or construction.

Explosion occurred as top half of pole was being removed

Anthony Ricottone was an employee of Verizon Communications. On Nov. 21, 2016, he was part of a work crew that had been dispatched, along with crews from PSEG Long Island, to replace a utility pole that had been struck and damaged by a vehicle.

Ricottone was standing about 150 feet away from the utility pole, waiting for the PSEG crew to remove the upper half, which had snapped off the base and had energized power lines attached to it. The Verizon crew was waiting to install a new utility pole once the PSEG crew was finished.

As the PSEG crew was hoisting a portion of the damaged utility pole, there was an explosion that prompted Ricottone to dive under his work truck for cover. He was injured as he dove under the truck. The court records do not provide details regarding the explosion, but there was no mention of any other injuries or damages.

Lower court grants company summary judgment

In December 2016, Ricottone filed a Labor Law claim against PSEG. He petitioned for summary judgment based on what he claimed was PSEG's violation of the provisions of the law "designed to prevent those types of accidents in which the scaffold, hoist, stay, ladder or other protective device proved inadequate to shield the injured worker from harm directly flowing from the application of the force of gravity to an object or person."

PSEG also requested summary judgment, arguing that the top of the pole never fell, so the gravity provision couldn't apply. Further, the company said the other

portion of Ricottone's claim – which involved the law's "nondelegable duty upon owners and contractors to provide reasonable and adequate protection and safety to construction workers" – couldn't stand because it only applied to construction work. The work being performed on the day of the incident was maintenance, according to PSEG.

A lower court granted PSEG's petition for summary judgment.

Appeals court finds triable issues of fact

On appeal, Ricottone again pointed to the gravity provision of the Labor Law and PSEG's duty to provide protection and safety to construction workers.

The Appellate Division, Second Department found that the lower court didn't err in granting summary judgment to PSEG on the gravity provision of Ricottone's lawsuit. The appeals court pointed out that the gravity provision extends "only to a narrow class of special hazards" not "any and all perils" connected to the force of gravity. PSEG successfully defended itself against this portion of the lawsuit with testimony from Ricottone acknowledging that his injuries were from diving under his truck, not from the falling top half of the utility pole.

However, on PSEG's duty to provide protection and safety to construction workers, the appeals court found there were triable issues of fact over whether the work being performed qualified as maintenance work. "Generally, courts have held that work constitutes routine maintenance where the work involves replacing components that require replacement in the course of normal wear and tear," according to the appeals court. In this case, the evidence didn't support the work being done was simply the replacement of parts due to normal wear and tear. Ricottone also failed to provide enough evidence to warrant summary judgment on his claim that the work being done qualified as construction, the court ruled.

Because of these triable issues of fact, the court revived that portion of Ricottone's Labor Law claim.

Federal OSHA switching from traditional hard hats to modern safety helmets

Federal OSHA announced that it is making the change from issuing traditional hard hats to its inspectors to more modern safety helmets.

The change is expected to better protect OSHA employees while they're on inspection sites, according to the agency.

The agency issued a bulletin on Nov. 22, 2023, detailing key differences between hard hats and safety helmets. That bulletin recommended using safety helmets instead of hard hats in:

- the construction industry
- the oil and gas industry
- high-temperature, specialized work situations and low-risk environments
- tasks involving electrical work and working from heights, and
- industries that require safety helmets by regulation or industry standards.

Because OSHA wants employers to make safety and health a core value, the agency wanted to show its commitment to doing the same "by leading by example and embracing the evolution of head protection."

Safety helmets offer chin straps, better ventilation

The Bureau of Labor Statistics reported in 2020 that head injuries accounted for almost 6% of non-fatal workplace injuries involving days away from work. Most of those injuries occurred when workers came in contact with an object or equipment. Another 20% were caused by slips, trips and falls.

Traditional hard hats, the design of which date back to the 1960s, protect the top of a worker's head but have minimal side impact protection. Further, they lack chin straps, which means they can fall off if a worker trips, leaving them unprotected. Hard hats also lack vents and trap heat inside.

Safety helmets typically have chin straps and ventilation and are often offered with "face shields or goggles to protect against projectiles, dust and chemical splashes." Some safety helmets offer built-in hearing protection or communication systems that "enable clear communication in noisy environments."

You Be The Judge

An employee was injured after bypassing an electronic safety lock – Is the employer to blame?



It was 2 p.m. and Safety Manager Pete Travers could feel that post-lunch fatigue trying to drag him down.

This must be Thursday. I never could get the hang of Thursdays, Pete thought, internally quoting one of his favorite lines from Douglas Adams' *The Hitchhiker's Guide to the Galaxy*. That made him smile.

But Pete's smile disappeared as he took a sip of the coffee he had just poured into his mug from the office coffee pot.

He almost choked. "How old is this coffee?" he asked no one in particular.

John Jenkins, the company attorney walked into the room.

"Pete, we need to have a chat," John said.

"Give me a second," Pete replied as he walked toward the sink with the coffee pot in hand. "If I don't get rid of this coffee now, I'll feel like I'm ignoring a toxic hazard."

Unauthorized employee injured while operating forklift

Later, in Pete's office, John explained that OSHA was citing the company.

"This is about the employee who injured his leg while operating a forklift, right?" Pete asked. "He stuck his leg out while making a turn and caught it on a bollard?"

"Yeah, that's the one," John said, glancing over the citation. "It says

the employee was unauthorized to operate a forklift when he was injured."

"That's true," said Pete. "Does it mention how he had to bypass software that ensures only trained, authorized personnel can operate our forklifts?"

"Really?" John asked, looking up from the paperwork. "You mean not just anyone can get on a forklift and start it up?"

"Exactly. The software requires an ID card," Pete explained. "An authorized employee uses their ID card and then is forced to inspect the forklift before it can be used."

He used another employee's ID card to gain access

"In this case, Pat Lillard, the injured employee, used another employee's ID card to get access to use the forklift," Pete added.

"Did the employee who let Lillard use his card get disciplined?" John asked.

"We wrote him up, but not exactly for that reason," said Pete. "We couldn't determine if the other employee let Pat use the card or if Pat took it without the other employee knowing. He was written up for losing the card and not reporting it."

Supervisor helped bypass safety system?

"The other issue is that Pat answered one of the inspection

questions incorrectly, which would have locked out the forklift until a supervisor cleared it," Pete continued. "Obviously, that got bypassed somehow but none of our supervisors know anything about it."

"How did you handle that?" John asked.

"We had a discussion with all of the supervisors and then conducted retraining on the system procedures," Pete said. "Again, we didn't want to get too rough because we couldn't prove anything. Pat bragged in the past that he knew computers pretty well, so he may have figured out how to bypass it himself."

"Regardless, we have a thorough disciplinary system," said Pete. "We fired people not terribly long ago for forklift safety violations."

"On top of that, our floor supervisors are responsible for conducting three behavior-based safety observations and two coaching method observations per day," Pete added. "Our supervisors are onboard with our safety program. They do what's required and then some."

"Based on everything you just told me, I think we can beat this citation," John said. "This is a clear case of unpreventable employee misconduct."

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

You Be The Judge

An employee was injured after bypassing an electronic safety lock – Is the employer to blame? (continued)

The decision

Yes, Pete's company won when an administrative law judge with the Occupational Safety and Health Review Commission found that OSHA failed to prove the company had knowledge of the violation.

OSHA claimed that another worker used their ID card to let the unauthorized employee use the forklift. The agency also said that a supervisor bypassed the system when the unauthorized employee answered an inspection question incorrectly.

The company argued that it had no knowledge of the unauthorized employee's violation and that OSHA couldn't prove that anyone helped bypass the forklift's safety system.

The judge agreed with the company, finding that OSHA failed to provide any evidence regarding the worker whose ID card was used or the supervisor who allegedly helped bypass the safety lock.

Company took 'reasonable steps' to monitor compliance

The judge said that the company's computer safety system for forklifts, its mandatory supervisor safety observations and its disciplinary system were "reasonable steps to monitor compliance with safety requirements."

In short, the company made an effort to ensure that unauthorized employees couldn't use forklifts

and attempted to monitor compliance with both the forklift safety system and through supervisor observations. If all of that failed, the company's disciplinary program was used on offending employees, even up to termination.

Without any solid evidence to prove the company had actual or constructive knowledge of the violation, and with all of the company's efforts to combat violations taken into consideration, the judge ruled in the company's favor.

Analysis: When it comes to safety, technology only goes so far

This case demonstrates that while technology can be a helpful tool in a safety professional's kit, it's definitely not the end-all, be-all it's sometimes made out to be.

In this situation, the computer safety system installed in the forklift to keep unauthorized employees from running the machine was easily bypassed. All it took was using another employee's ID card. If the employee in this case wouldn't have answered an inspection question incorrectly, the second part of the system – the supervisor bypass – wouldn't even have come into play.

The company's use of mandatory supervisor safety observations and its thorough disciplinary system showed that it, too, felt that it couldn't rely solely on the ID card safety system.

Cite: [Secretary of Labor v. Americold Logistics](#), Occupational Safety and Health Review Commission, No. 22-1400, 8/22/2023. Dramatized for effect.



Fatal tire explosion at Alabama auto shop results in \$14K OSHA fine

OSHA fined an Alabama auto shop for failing to protect its employees from deadly tire explosions that can occur as tires are being inflated.

Inspectors began an investigation at the shop after a 45-year-old mechanic suffered fatal injuries from a tire explosion on Jan. 18, 2023. The mechanic and an apprentice had just inflated a tractor tire after mounting it on its rim when the tire exploded as the mechanic leaned over to unhook the air compressor's hose. The tire struck the mechanic before flying upward, breaking through the ceiling and landing on the shop's roof.

OSHA found that the air compressor that was in use during the incident was set to inflate the tire at 110 pounds per square inch when the tire had a maximum load-carrying capacity of 35 pounds per square inch.

Inspectors also learned that the tire shop allowed employees to inflate tires on single-piece rim wheels without using a required restraining device or barrier for protection against a tire explosion.

Fine: \$14,511

Company: W8 Shipping LLC, Linden, NJ

Business: Tire dealer

Reasons for fine:

Three serious violations for failing to:

- prevent employees from inflating tires on single-piece rim wheels without using a required restraining device or barrier as protection from explosions
- ensure that employees stay out of the tire's potential trajectory when inflating on a single-piece rim wheel
- ensure tires aren't inflated above the maximum pressure recommended by the manufacturer

Three other-than serious violations for failing to:

- develop a workplace hazard communication program
- have a safety data sheet for each hazardous chemical in the workplace
- train employees on hazardous chemicals in their work areas

HAZARDS

Top 10 Safety News Alert stories of 2023

 by Merriell Moyer



THIS YEAR'S MOST POPULAR SAFETY STORIES

Federal requirements on use of oral fluid drug tests, a family of four engaged in workers' compensation fraud and children being allowed to operate forklifts at a warehouse are just a few of Safety News Alert's top stories of 2023.

Also on this year's list are an OSHA lawsuit, fatal falls due to employer failures to properly train workers and provide PPE, and a business owner who was struck and killed by the bulldozer he was attempting to fix.

The full list with highlights and links to the stories are below:

1 New U.S. Department of Transportation drug testing requirements allow use of oral fluid tests:

In May, the U.S. Department of Transportation updated its drug testing requirements to allow the use of oral fluid testing for regulated

drug and alcohol programs. Under the new regulation, employers would have the right to determine which type of sample they would collect for drug testing purposes, allowing for more flexibility in the sample collection process for both employers and employees.

2 4 family members charged in \$2.1M workers' compensation fraud scheme at 2 businesses:

Four family members were charged with multiple counts of workers' compensation fraud for underreporting payroll at two of their California agriculture businesses. The California Department of Insurance charged them after finding their companies underreported payroll to illegally save more than \$2.1 million in workers' compensation insurance premiums. This fraud scheme was discovered after a previous investigation resulted in the sentencing of the father and daughter for a similar scheme.

3 OSHA files lawsuit against Illinois roofing contracting who owes \$360K in fines:

OSHA took an Illinois roofing contractor to court in August for failing to pay more than \$360,000 in fines for repeatedly exposing employees to falls from heights. Joshua Herion, owner of ECS Roofing Professionals Inc., faced a lawsuit filed by OSHA and based on inspections that found fall hazards at two job sites in Illinois and Wisconsin in October 2022. The Occupational Safety and Health Review Commission had affirmed citations stemming from those inspections, but Herion failed to pay the fines. Herion had a long history of OSHA violations dating back to 2014. Since then, OSHA has cited Herion and his companies nine times for violations related to fall protection.

4 Report: Fatal fall result of employer's failure to train foreman how to properly use PPE:

A 59-year-old construction foreman suffered a fatal fall from the leading edge of a roof deck despite wearing fall PPE. Washington State Fatality Assessment & Control Evaluation program investigators determined that the foreman used a fall-arrest system that was too long and failed to properly secure the chest and leg straps of his harness. Investigators found that the employer didn't provide adequate

fall protection training because it failed to show employees how to evaluate fall clearance distances and how to properly engage fall harness connectors.

5 **Feds find employer at fault for worker who died of carbon monoxide poisoning in his own vehicle:**

A federal investigation found that it was a mine operator's fault that a contractor worker died of carbon monoxide poisoning while waiting for a late train in his personal vehicle during his shift. U.S. Mine Safety and Health Administration (MSHA) investigators determined that the mine operator and contractor didn't ensure that the worker's personal vehicle was maintained in a safe operating condition. Because contractor workers were required to wait in their own personal vehicles, MSHA found the mine operator and contractor at fault for the incident. The two companies have since developed a new written procedure that doesn't allow miners or contractors to stay in their personal vehicles. Further, the mine now provides an area for contractor workers to wait in.

6 **Company cited in fatal forklift incident proves compliance in court: Worker still deceased:**

As safety professionals know, compliance and safety aren't the same thing. This case, for example, was about a company accused of violating OSHA's General Duty Clause in a fatal forklift under-ride incident. The company proved in court that it was actually compliant with a specific forklift standard, leading the court to vacate the citation. However, did

that compliance prevent the death of the employee? No, it did not. That's because compliance is the bare minimum required by law. It's a baseline for safety, nothing more.

7 **Husband and wife business owners charged in \$4M workers' compensation fraud scheme:**

In July, a husband and wife were charged with workers' compensation fraud for underreporting more than \$4 million in payroll for their California-based construction company. Brian and Leslie Hill, the owners of Brian Hill Construction, were charged with multiple felony counts of insurance fraud and conspiracy following a California Department of Insurance investigation. The Hills were also found to have skirted the workers' compensation process by paying a hospital directly and eliminating benefits an injured worker may have been entitled to.

8 **Feds: Fatal fall result of employer's failure to assure worker's use of PPE:**

MSHA investigators found that while an employer provided fall PPE and training it failed to have adequate written procedures to ensure workers wore their safety gear, resulting in an employee's fatal fall. The worker had fall PPE in his truck, but he didn't bother to put it on when he had to climb up onto tall equipment to service it. The company now has new written procedures that requires employees to assess potential hazards and contact supervisors if fall protection is required.

9 **Owner struck, killed by bulldozer he failed to block while servicing:**

The owner of a mine was struck and killed by a bulldozer he was performing maintenance on because the company failed to ensure that workers blocked equipment against hazardous motion. MSHA found that the mine didn't have any procedures that required workers to block equipment they were servicing while in the maintenance shop. Following the tragic incident, the mine developed new written procedures requiring parking brakes to be set on all parked mobile equipment and blocking for any vehicles that had to be running for testing purposes.

10 **Warehouse in trouble with feds for employing children to operate forklifts, pick orders:**

In October, a Kentucky distribution center was in hot water with the U.S. Department of Labor following an investigation that revealed two children were employed to operate forklifts and pick orders at the facility. Investigators with the Wage and Hour Division found that Win. IT America employed an 11-year-old and a 13-year-old for months at its distribution center. One was employed as a forklift operator while the other was tasked with order picking. The U.S. District Court for the Eastern District of Kentucky granted a federal consent judgment requiring the company to stop employing children illegally and to not violate child labor laws in the future.

[Read this story online](#) 



4 ways to bridge the language barrier for safety training

Good communication is a key ingredient for any safety program, as safety professionals are well aware. However, what can be done when the language barrier comes into play?

If employees and safety professionals don't speak the same language well enough to talk to each other, how can company safety rules be effectively communicated?

This situation can occur in any industry, at any company, anywhere in the world but especially so in international companies with a global footprint.

For example, one safety professional – who shares her story below – reported having to come up with a way to conduct safety training with employees who spoke primarily Spanish, Russian and Arabic.

The key? Use the resources you have available to you and don't be afraid to think outside the box.

Some employees couldn't use equipment due to language barrier

Steven Johnson, the EHS director at a Virginia facility, had about 320 Hispanic employees reporting directly to him at one point. They used a variety of machines along with various cleaning chemicals.

Johnson found that some of the equipment manuals had instructions in Spanish, but those were few and far between. He also found that there were occasions when English words didn't translate to mean quite the same things in Spanish. All of that led to him having staff who couldn't safely use the equipment because they didn't have the proper instruction.

Johnson didn't speak Spanish, but he had bilingual supervisors who did, which did help to an extent. However, he wanted to do more.

He came up with these three tips to successfully remove the language barrier:

1. Contact equipment/chemical vendors

First, Johnson would contact the equipment and chemical vendors he worked with to see if they could help. He'd inquire if they had documentation that would support whatever language that was needed.

Sometimes they wouldn't have it on hand, but they'd go the extra mile to support customer requests.

2. See if the vendor has bilingual staff

If the vendor doesn't have documentation in the language you're looking for, Johnson

suggested seeing if they have a bilingual staff member who deals with equipment operations or maintenance.

Arrange for that individual to provide training to your end users, if the vendor does have someone available.

3. Contact the manufacturer directly

Sometimes vendors may not be able to help. In those situations, Johnson said it's time to go straight to the manufacturer with the same request.

When contacting the manufacturer for documentation in a specific language, see if they can reach out to someone who else who can help you if they don't have the preferred language you're looking for.

Bonus tip: Use Google Translate

When vendors and manufacturers are unable to help, it's time to take matters in your own hands. At least, that's what Kimberly Rappo, a safety specialist at a New Jersey facility, did.

Rappo's company had 500 employees at the home office, and some of them came from all around the world. She didn't have any problems communicating with her Spanish-speaking employees

Case Study

4 ways to bridge the language barrier for safety training (continued)

regarding training materials, but she also had Russian and Egyptian employees who didn't speak much English.

Most companies don't want to spend translation costs for just a few employees, but Rappo said it was her job to make sure they were trained. She felt that she had to figure out a way to translate her company's safety training documents herself.

She decided to translate the safety materials in Google Translate.

"It's not perfect, and it is time-consuming, but it works," Rappo said.

She explained that she would take a particular procedure, copy a paragraph into Google and translate it into whichever language she needed. Then she would sit down one-on-one with the employee and have them read the translated documents.

She would then explain what they read one paragraph at a time.

"I can communicate with the employees enough that I know they're understanding what they're reading because it's obviously not going to be a direct translation," she said. "It may take an extra hour or two, but when they go back to work, they are happy and grateful that someone took the time to ensure their understanding and their safety."

Training Tips



How to pick the best glove for the job

It's vital to keep workers' hands protected by providing the proper PPE. After all, they can't do their jobs without them.

However: Picking the best gloves for the job can be challenging. You have to consider if and what type of chemicals are being handled, nature and duration of contact, area requiring protection, grip needs, thermal protection, size and comfort, and abrasion requirements.

Here are the basics of glove safety to discuss at your next toolbox talk:

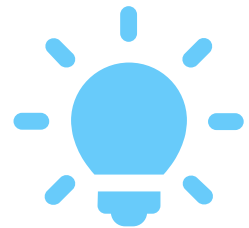
4 groups of gloves

Work gloves fall into one of four groups:

1. **Leather, canvas or metal mesh** – These materials provide protection from cuts and burns. Leather or canvas also protect against sustained heat.
2. **Fabric and coated fabric** – This group offers varying degrees of protection against dirt, slivers, chafing and abrasions, but aren't recommended for use with rough, sharp or heavy materials.
3. **Chemical and liquid-resistant** – These gloves provide protection from various liquids and chemicals. The thicker the glove, the better the resistance, but thickness may impair dexterity.
4. **Insulating rubber gloves** – Insulating gloves protect workers from electrical shock, but they're their own entity. They must be rated for the voltage and marked to indicate their rating.

Care of protective gloves

Gloves need to be inspected before each use for tears, punctures and other defects. To find tiny defects like pin holes, fill the gloves with water, roll the cuff toward the fingers and look for leaks. Replace discolored or stiff gloves as they indicate deterioration.



OSHA's top 5 most expensive fines of 2023

 by Merriell Moyer

Companies fined millions of dollars for machine, chemical, fall violations



The most expensive OSHA fines of 2023 involve two food manufacturers, a medical device sterilization company and a construction company that held the top spot for most expensive fine in 2022.

Machine safety violations leading to amputation and death, chemical exposure, fall hazards and asbestos were among the reasons these fines were issued.

The full list is below:

1 Miracapo Pizza Company - \$2.8 million

OSHA issued Miracapo Pizza Company a \$2,812,658 fine

when the Illinois frozen pizza manufacturer's failure to follow machine safety procedures led to the death of a sanitation worker.

Inspectors determined that the temporary worker was using compressed air to clean a running spiral conveyor when her head got caught in the machinery.

The agency found that temporary workers hadn't been trained or given the authority to stop equipment from moving before cleaning.

This incident led to 16 willful egregious, one willful and 12 serious violations regarding machine guarding, fall and electrical hazards.

A similar amputation incident had occurred only months before this fatality at the same facility.

2 Zwanenberg Food Group USA - \$1.9 million

Like the first entry on this list, the second most expensive fine involved a temporary worker who was severely injured due to machinery hazards found at a food manufacturing facility.

Zwanenberg Food Group USA was fined \$1,929,160 following an incident that saw a temporary worker lose a leg after falling into an industrial blender he was cleaning.

OSHA found that Zwanenberg didn't train sanitation workers to lock out equipment prior to cleaning, which exposed them to moving machine parts. The company had been cited

for similar violations less than two weeks before this incident occurred.

The incident led to 11 willful, one repeat and four serious violations involving lockout/tagout machine safety procedures during cleaning and maintenance activities.

3 Parter Medical Products - \$838,800

Cal/OSHA fined Parter Medical Products \$838,800 for failing to protect its employees from overexposure to ethylene oxide.

The state agency found that one employee, for example, was overexposed to the toxic chemical throughout his entire shift. The permissible exposure limit for eight hours is no more than 1 parts per million (ppm), but this employee was exposed to 5 to 9 ppm during his shift. Other employees were found to be exposed to ethylene oxide above the permissible limit from 2019 until 2022.

Violations involved failure to have an effective safety plan to evaluate and develop controls for hazards, failure to develop a respiratory protection plan, failure to monitor employee exposure, and failure to notify workers of exposure over the permissible limit for ethylene oxide.

4 City of Albuquerque - \$685,729

The City of Albuquerque was fined \$685,729 by New Mexico OSHA for recklessly violating federal regulations regarding asbestos at the city's Gateway Center construction project.

A whistleblower notified the state agency that asbestos was being handled in an unsafe manner as renovations were being made to an old hospital building on the construction site, according to KRQE News 13.

"The City knew it was wrong. Yet they did it anyway," the news outlet said.

This violation led to "the largest safety fine in New Mexico history."

5 ALJ Home Improvement - \$685,536

ALJ Home Improvement Inc. had the most expensive OSHA fine in 2022, coming at a whopping \$1.3 million. In 2023, the construction company came in fourth place with a \$687,536 fine.

This year's fine, which follows seven inspections in four years and 33 total violations, was once again for failing to provide employees working at heights with fall protection.

[Read this story online](#) 

What Would You Do?

What can be done when winter weather catches short-staffed company off guard on busy day?



Manager Mike Kelly was going over his upcoming safety presentation when he began to hear a regular tapping noise against his office window.

He got up to look outside and saw that it was sleeting. From the looks of things, it had been sleeting pretty hard for a while.

I was really focused on that presentation, I guess, Mike thought.

What Mike didn't see outside was anyone salting the access road, parking lot or walkways. Typically, maintenance was on top of winter weather.

I better go see what's going on, Mike thought as he grabbed his jacket and headed for the maintenance shop.

Maintenance has people out sick, on vacation

When he arrived at the shop, Mike looked around bewildered.

Where is everybody, he thought. "Hello! Anyone at home?" Mike called out as he walked through the shop.

Mike began to leave just as Charlie Warner, the maintenance manager, pulled up on a cart.

"Hi, Mike," Charlie said, getting out of the cart. "If you're looking for us to take care of something, take a number. Several of my guys are on vacation or out sick and the rest are tied up with 'critical issues' in manufacturing."

"So there's no one free to take care of the access road and parking lot?" Mike asked.

"What do you mean?" Charlie asked as he began gathering up some tools and loading them on the cart. "Don't tell me it's snowing."

"It's sleeting," Mike said. "The road, parking lot and walkways are all looking treacherous at this point."

'C-suite said getting machines working is priority'

Charlie swore. "I don't have the manpower to take care of it," he said.

"The guys in the warehouse usually help out," said Mike. "I'll see if I can get them on it."

Charlie shook his head. "No good there, either," he replied. "They're short-staffed today too, from what I understand. The crew that is here is tied up with orders that are supposed to go out today."

"Manufacturing has several machines down and I was told by the C-suite, no less, that my priority was getting them back up and running," Charlie explained as he got back on the cart. "A major client's big order caught everyone completely by surprise, they said."

"If there are trucks coming in to pick up – not to mention the upcoming shift change – it's going to be a disaster out there if no one takes care of the weather issue," said Mike.

"I have my orders," Charlie said. "Everybody is just going to have to walk carefully and drive slowly out there, I guess."

If you were Mike, what would you do?

Talk to someone in Corporate

Mike needs to get in touch with someone in the C-suite immediately. A member of Corporate could change Charlie's priority, hopefully before an accident happens.

Surely, the C-suite team would want the weather hazard addressed. After all, an accident on the access road could prevent that product from being shipped out on time.

Get help from those warehouse workers

Charlie may have said that the warehouse was too short-staffed to help, but Mike may still be able to work something out with the warehouse supervisor. Maybe the warehouse supervisor would be more willing to cooperate than Charlie.

Those warehouse workers who helped with weather-related issues in the past may not be able to do everything the maintenance staff can but they could at least get things started. That effort would certainly help until Mike could convince Corporate to free up the maintenance staff.

Icy access road causes worker fatality

Safety professionals know that winter weather hazards can't be ignored. If there's snow or ice, it must be addressed, otherwise injuries and incidents could follow.

For example, a miner was killed on an icy access road on Jan. 17, 2023

What Would You Do?

What can be done when winter weather catches short-staffed company off guard on busy day? (continued)

as he was reporting to the Mojave Plant & Quarry Mine in Kern County, California to start his shift.

Kenneth Colindres was the mine's weigh master. He was traveling in his personal vehicle, a 1999 Toyota Echo, on the mine's access road at 2:34 a.m. on a cold winter morning. At the same time, a haul truck was leaving the mine to deliver a load. The access road was paved and in good condition, but freezing rain made travel treacherous.

Both vehicles were traveling around 30 to 35 mph, under the access road's posted 40 mph speed limit. Colindres' vehicle hit a patch of black ice, causing him to lose control and cross into the other lane where his

Echo was struck by the oncoming haul truck.

Colindres was severely injured in the crash and died in the hospital the next day.

Employer now uses de-icing material, monitors weather forecasts

Investigators with the U.S. Mine Safety and Health Administration (MSHA) found that the mine operator didn't have the equipment or material needed to properly address the icy road conditions. In fact, there had been no effort made to address the ice on the access road.

Following the incident, the mine operator developed a new procedure that included:

- daily access road examinations with documentation and correction of any identified hazards, and
- monitoring weather forecasts and proactively applying anti-skid or de-icing material to the roadway.

Additionally, the mine operator installed signs to warn drivers about potentially slippery road conditions and repainted the roadway markings to improve visibility of the center line.

Training Tips



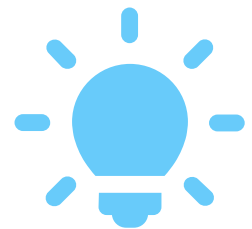
End safety meetings on a positive note

It's important to point out where workers can improve during a safety meeting.

But try wrapping meetings up with something positive.

Example: If you notice your workers are doing a great job with a new safety procedure, bring it up.

One safety manager told us that wrapping things up on a positive note made workers like safety meetings more.



RISE DUE TO 35% SPIKE IN RESPIRATORY ILLNESSES



INJURIES

Bureau of Labor Statistics reports 7.5% increase in nonfatal workplace injuries, illnesses in 2022

 by Merriell Moyer

There were 2.8 million nonfatal workplace injuries and illnesses in 2022, up 7.5% from 2021, according to a new report from the U.S. Bureau of Labor Statistics (BLS).

That increase is driven by a rise in both injuries, with a 4.5% increase to 2.3 million cases, and illnesses which rose 26.1% to 460,700 cases.

The BLS report, which was released Nov. 8, 2023, states that the increase in illnesses is driven by the rise in respiratory illness cases, which rose 35.4% to 365,000 cases in 2022. That follows a decrease in respiratory illnesses in 2021 when compared to 2020.

Respiratory illnesses cause spike in illness rates

The 2022 total recordable cases incidence rate was 2.7 cases per 100 full-time equivalent (FTE) workers, and the rate of injury cases was 2.3 cases per 100 FTE, which was unchanged from 2021.

In 2022, the illness rate increased to 45.2 cases per 10,000 FTE workers compared to 37.7 cases in 2021. Again, the increase was driven by a rise in respiratory illness rates, which rose to 35.8 cases per 10,000 FTE workers from 27.8 cases in 2021.

Transportation had highest number of injury-related transfers

Note: Beginning in 2023, all-industry case characteristics and worker demographics information will be published by the BLS every two years.

For the 2021-2022 two-year period, there were 2.2 million days away from work (DAFW) cases, representing 66.5% of the total cases involving DAFW, job restriction or transfer (DART). The incident rate was 112.9 cases per 10,000 FTE workers. The median number of days from work missed was 10.

Over the same period, there were 1.1 million DART cases, which accounted for 33.5% of the total. That resulted in a rate of 56.9 cases per 10,000 FTE workers with a 15-day median of transfer or restriction.

Transportation and material moving jobs had the highest number of DART cases among the major occupation groups with 835,040 total injuries and illnesses over the 2021-2022 period. These occurred at a rate of 410 cases per 10,000 FTE workers, with 503,610 (60.3%) DART cases requiring at least one day away from work. There were 331,430 cases, or 39.7%, resulting in one or more days of job transfer or restriction.

Among production jobs, 53.8% (223,840) of all DART cases resulted in one or more days away from work with the remaining 46.2% requiring one or more days of job transfer or restriction.

Overexertion, bodily reactions most prevalent incident types

During the 2021-2022 period, overexertion and bodily reactions saw the most DART cases with 1,001,440. Contact with objects and equipment was a distant second with 780,690 cases. Of these, 52.1% resulted in days away from work, which occurred at an incidence rate of 26.2 cases per 10,000 FTE workers requiring a median of 14 days away from work.

Most of the DART cases in transportation and material moving jobs were due to overexertion and bodily reactions, with half of these cases (165,690) resulting in one or more days away from work.

Out of 658,240 total exposure to harmful substances or environments cases, 634,080 (96.3%) involved at least one day away from work.

More highlights

Other highlights from the report include:

- the number of respirator illnesses in private health care and social assistance increased 37.5% from 145,300 cases in 2021 to 199,700 in 2022
- the rate of respiratory illnesses in grocery stores in 2022 was 190.4 cases per 10,000 FTE workers, an increase from 66.8 in 2021
- there were 560,750 total DAFW cases in private industry over the 2021-2022 period due to the same code used to classify cases of COVID-19, and
- over the 2021-2022 period, there was 502,380 workplace musculoskeletal disorders resulting in at least one day away from work and occurring at an incidence rate of 25.3 per 10,000 FTE workers.

[Read this story online](#) 

Who Got Fined & Why



Pet supply retailer fined \$129K for exposing workers to live and dead rodents

A national pet supply retailer was cited by OSHA for routinely exposing its employees to live and dead rodents and the rodents' bodily fluids at a Massachusetts store location.

OSHA opened the investigation based on an employee complaint regarding working conditions at the store.

Inspectors found the facility lacked an effective vermin control program to stop rodents from entering the store and sheltering in the store's receiving room and on the sales floor.

The company was cited in 2021 for a similar violation at a Corpus Christi, Texas location.

Fine: \$129,473

Company: PETCO Animal Supplies Stores Inc., North Andover, Massachusetts

Business: Pet and pet supplies stores

Reasons for fine:

Two repeat violations for failing to:

- construct, equip and maintain enclosed workplaces in a way to prevent the entrance of rodents, insects or other vermin
- maintain a 3-foot minimum clearance for headroom of working spaces around service equipment, switchboards, panel boards, or motor control centers

Two serious violations for failing to:

- provide adequate facilities for quick drenching or flushing of the eyes and skin within the work area for immediate emergency use
- ensure that each container of hazardous chemicals in the workplace was labeled, tagged or marked with information regarding the hazard present

Demolition worker crushed by concrete wall: Did employer overlook hazards?



"Excuse me, would you mind putting in the code?" asked Roberto, a new hire at Mega Cold Storage. "For the forklift? So I can move the pallets that just came in."

"Uhhh ... the code?" replied one of the company's several supervisors. "Don't you remember it?"

Roberto sighed. "I've gotta finish the training," said Roberto. "It's OK. I've driven a forklift many times. At all of my old jobs. None of those places made taking out a forklift so complicated!"

"I don't know ...," said the employee.

"Don't worry, I'm safe," said Roberto. "They'll give me a code when I finish the training. Should be done by Friday."

"OK," the supervisor said. He punched in the code to unlock the forklift. "Don't make me regret it!"

"Thanks, it's all good!" said Roberto. The newbie approached a stack, inserted the forks and drove toward a shelving area.

Man oh man, it's tight in here, Roberto thought. Mega Cold was the biggest and also the busiest warehouse he'd ever worked in. There never seemed to be a quiet moment.

As he approached a corner, Roberto realized he'd come close to grazing a support column. Just then he saw two employees quickly crossing in front of him.

"Whoa!" Roberto yelled. He stood up and stuck his foot out against the pole to prevent a collision instead of slamming on brakes.

Roberto's leg, ankle and foot took all of the impact. He suffered multiple breaks that would put him in a hospital bed and then a wheelchair for months.

Was the company's mistake a willful one?

"Let's talk about the OSHA citation," said Nate Berman, Mega Cold's CEO. "If we contest it, we need to reply this week. What do you think?"

"I knew that OSHA inspector would be trouble," said Frank Kirby, the operations manager who doubled as safety chief. "He doesn't even understand OSHA regulations!"

"Really?" said Nate. "Go on."

"OSHA wrote us a willful citation for allowing untrained employees to use a forklift," said Frank. "Nothing could be further from the truth."

"We make all employees who are going to operate a forklift take our training," Frank continued. "They need a code to unlock a truck, which they don't get until they've graduated. Roberto signed a two-page document saying he agreed to complete the training and wouldn't attempt to use a vehicle until he'd passed."

"Got it," said Nate.

"And the term 'willful' means a company knew a violation was about to occur or routinely allowed workers to flaunt an OSHA rule," said Frank. "That's nonsense. We didn't have any knowledge of workers giving out the code."

"Did you find out who gave Roberto the code?" asked Nate.

"I've got my suspicions but no one's come forward," said Frank. "I changed the whole process since the accident took place. Now it's just me and another supervisor who know the code. Won't happen again."

"You explained this all to the OSHA inspector?" asked Nate.

"Yes. I didn't dispute the facts of what happened at all," said Frank. "The accident was Roberto's and a supervisor's fault, not ours. We should fight this citation."

How did the judge see it?

An administrative law judge heard the appeal and ruled in favor of the company.

Reason: OSHA failed to prove the company didn't "exercise reasonable diligence to ensure only trained individuals operate [forklifts] at its facility."

The company's use of a lock code, training and documented discipline of workers who broke safety rules all contributed to the judge's finding. As a result, the penalty was vacated.

(Based on [Secretary of Labor v. Americold Logistics.](#))

HAZARDS

Report: Feds underestimating impact new silica rule will have in saving miners' lives

 by Merriell Moyer



AGENCY DATA IGNORES THOUSANDS OF SICK MINERS

A tougher silica dust rule proposed by the U.S. Mine Safety and Health Administration (MSHA) could save significantly more miners' lives than the agency estimated, according to a new report.

MSHA's predictions said the new rule would "save only 63 coal miner lives and avoid 244 cases of black lung disease over 60 years" but an investigative report finds that is a gross underestimate.

The investigation – which was conducted by National Public Radio (NPR), Public Health Watch, Louisville Public Media and Mountain State Spotlight – found more than 4,000 cases of complicated black lung from silica dust exposure since 2010 and more than 1,500 diagnoses in the last five years alone.

This discrepancy is due to MSHA basing its predictions on a risk analysis that was dependent on knowing "precisely how much

silica dust exposure" a sick miner experienced, the report said. That information isn't available for the thousands of cases reported by clinics and the National Institute for Occupational Safety and Health.

MSHA attempting to bring its standard in line with OSHA's

MSHA published a notice of proposed rulemaking in July 2023

to amend its silica dust rule to give miners the same level of protection against silica dust as workers in other industries.

Respirable crystalline silica is a carcinogen and exposures over time cause severe illnesses such as silicosis, progressive massive fibrosis, kidney disease and lung cancer. Exposure can also lead to coal workers' pneumoconiosis, or black lung disease, as well as multi-dust pneumoconiosis.

The proposed rule would require mine operators to maintain a permissible exposure limit (PEL) of respirable crystalline silica at or below 50 micrograms per cubic meter of air for a full shift, calculated as an eight-hour time-weighted average.

Currently, there is no separate standard for respirable crystalline silica with exposures regulated through "reductions in the overall respirable coal mine dust standard." For metal and non-metal mines, the existing PEL for quartz is 100 micrograms per cubic meter of air for a full shift, calculated as an eight-hour time-weighted average.

MSHA's proposed rule would bring the agency's standard in line with federal OSHA's silica standard. Meanwhile, OSHA is facing its own silica woes in trying to address an increase in silica dust exposures in the engineered stone fabrication industry.

Advocates worry low numbers will 'undercut urgency' for rule

Under MSHA's proposed rule, mine operators would be required to

take immediate corrective actions if the PEL is exceeded. Operators would also have to perform exposure sampling and provide no-cost medical surveillance for miners. Outdated requirements for respiratory protection would also be changed to reflect "the latest advances in respiratory protection technologies and practices."

The rule would also include a framework for MSHA to directly regulate excessive exposures which could lead to citations and fines for mine operators, according to the NPR report.

Mine safety advocates welcome the new PEL, but they worry that MSHA's failure to "account for the thousands of sick and dying miners now suffering from the disease" will undercut the urgency for the proposed rule and "embolden opposition from the mining industry."

'The scale of human tragedy is profound'

How bad is it for the miners who were, and continue to be, sickened by overexposure to silica?

"The scale of human tragedy is profound," Kirsten Almberg, an epidemiologist at the Black Lung Data and Resource Center at the University of Illinois Chicago, told NPR. "There's really no way to quantify ... the individual tragedy that happens in each of these cases, with lives cut short, careers cut short, communities reeling and families falling apart. It's just devastating."

MSHA's predictions pale in comparison to what the clinics

treating miners are actually seeing, NPR's report said.

There are three clinics in Virginia and Kentucky alone that "together reported more than 1,500 cases in the last decade. That's six times the number of cases MSHA says its proposed rule would prevent over 60 years."

[Read this story online](#) 

Who Got Fined & Why



Food manufacturer employee loses finger on hot pasta sauce line: \$272K OSHA fine

A food manufacturer with facilities across the U.S. is in hot water with OSHA for the third time in five years after an employee suffered a finger amputation on the hot pasta sauce line at an Illinois plant.

Inspectors found that the worker contacted moving machine parts as he was trying to find a piece of a broken ball valve that was lodged in the system when the incident occurred.

OSHA cited the company for similar machine guarding and lockout/tagout violations in 2019 and 2020.

Fine: \$272,792

Company: Rana Meal Solutions LLC, Bartlett, Illinois

Business: Perishable prepared food manufacturing

Reasons for fine:

Two repeat violations for failing to:

- conduct a periodic inspection of energy control procedures at least annually
- cover all actions and sequences of actions for lockout/tagout in the lockout/tagout procedures

12 serious violations for failing to

- provide raised sills or ramps at least 4 inches below the surrounding floor in the chemical storage room
- ensure that the ventilation equipment and lighting fixtures in the chemical storage room were operated by the same switch and located outside of the door
- develop the means, procedures and practices necessary for safe permit space entry operations
- prepare an entry permit for employees entering a permit-required confined space
- develop procedures for the control of potentially hazardous energy
- outline the scope, purpose, authorization, rules and techniques to be used for the control of hazardous energy

Continued on next page

Who Got Fined & Why



Food manufacturer employee loses finger on hot pasta sauce line: \$272K OSHA fine (continued)

- retrain all employees involved in a group servicing activity on the machine that wasn't de-energized prior to performing work
- ensure that employees locked out a machine while multiple employees were performing cleaning tasks
- inspect a sling and all of its fastenings and attachments before using it to lift a machine cover
- place an identification tag with information on the size, grade, rated capacity and reach of a chain used as a sling to lift machine covers
- properly guard a machine to prevent employees from accessing pinch points likely to result in serious injury
- enclose sprocket wheels and chains 7 feet or less above floors or platforms

Training Tips



Does your crew know how to drive safely in winter?

When winter comes, snow and ice are just two more safety hazards to worry about – and train workers on. How can you keep your crew safe if they're driving in winter weather conditions? Have them answer *True* or *False* to the following questions to test their knowledge:

1. The best thing you can do if it's snowing is drive a mile or two below the speed limit.
2. If you're driving a vehicle with anti-lock brakes, tapping the brakes lightly is the best way to slow down.
3. If your car skids on snow or ice, you should hit the brakes quickly to stop skidding.
4. For the best traction, the tread on your tires should be 1/8-inch deep.

Answers to the quiz:

1. *False*. If it's snowing or icy, it's best to drive well below the speed limit. If you usually drive 40 miles per hour, it's best to slow down to around 20 mph.
2. *False*. If you're driving a vehicle with anti-lock brakes, it's best to firmly hit the brake and hold it down. The pedal should feel "crunchy" when you push it down. That's how you know the anti-lock brakes are working.
3. *False*. If you start to skid, steer your car gently into the skid and remove your foot slowly from the gas pedal. The last thing you should do is wildly pump the brakes or gas.
4. *True*. The tread on tires should be 1/8-inch in depth. It's good to double check that before winter weather arrives. It's best to keep snow chains or tires in your trunk in case you get stuck.



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

Meet Our Editors



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