

News & Training SafetyAlert

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July 2022

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Feds: Failure to lock out equipment led to miner's death..... **13**

Are there benefits to regular safety training? Recent incidents point to yes **20**

Mining incidents show value of lockout rules, pre-op inspections



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July 2022

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News Briefs

Safety Stories You Might Have Missed

Is PVC a hazardous waste? EPA may say 'Yes'

May 23, 2022

Believe it or not, EPA may add polyvinyl chloride (PVC) piping to its hazardous waste list!

A court ruled EPA must reconsider a 2014 petition to regulate PVC, vinyl chloride and associated phthalate plasticizers under the Resource Conservation and Recovery Act.

[Read more](#) 

ADA suit shows just how murky marijuana situation has become

May 24, 2022

Marijuana legalization, medical and otherwise, is a tricky area for employers in the U.S., filled with ambiguities from state to state and even on the federal level. That's also true for legal products derived from cannabis.

A May 13 court decision involving the Americans with Disabilities Act (ADA), an employee taking a legal cannabis product for chronic migraines and a positive marijuana drug test, is a perfect illustration of just how confusing the marijuana issue has become.

[Read more](#) 

Ship crew's scenario-based training helped contain engine room fire

May 26, 2022

A ship crew's successful efforts to stop an engine fire from spreading throughout the vessel was the result of realistic scenario-based training, according to the National Transportation Safety Board (NTSB).

An investigation into a 2021 fire aboard the containership President Eisenhower demonstrates the importance of such training, the NTSB states in its report on the incident.

[Read more](#) 

Lack of computer skills not enough for extension to fight OSHA citation

May 26, 2022

Can an employer get a second chance to fight an OSHA citation if it failed to file a timely response? Yes, but only in rare instances and under "exceptional circumstances."

An Occupational Safety and Health Review Commission (OSHRC) case shows that an employer's lack of computer skills and technical difficulties in filing electronically with the court wasn't enough to get an extension of the OSHRC's filing deadline.

[Read more](#) 

Worker who violated COVID-19 protocols can't pursue disability lawsuit

May 27, 2022

An employee who was fired for going to work while sick with COVID-19 cannot pursue a disability discrimination lawsuit against her former employer, according to a May 16, 2022 court decision.

The U.S. District Court for the Southern District of California found in favor of the employer because the worker's COVID symptoms were mild and temporary and didn't qualify as a disability under the California Fair Employment and Housing Act (FEHA).

[Read more](#) 

JBS Foods settles with OSHA over COVID-19 violations

May 27, 2022

JBS Foods reached a settlement agreement with OSHA to develop and use infectious disease preparedness plans at seven of its meat processing plants. This stems from two COVID-19 outbreaks at two plants in 2020.

The agreement involves the company assembling a team of company and third-party experts to create the plan and put it into action at plants in Colorado, Illinois, Nebraska, Pennsylvania, Texas and Wisconsin.

[Read more](#) 

Parent company protected by workers' comp law in tragic sawmill incident

June 1, 2022

Is the parent company of a worker's direct employer protected from civil liability when a fatal incident occurs at a worksite? The Arkansas Court of Appeals found that, yes, the workers' compensation exclusivity provision does extend to a parent company.

A lawsuit filed by the estate of a deceased worker can't move forward after the appeals court found the parent company was entitled to the same protections as the direct employer under the state's workers' compensation law.

[Read more](#) 

Owner, company plead guilty to \$300K workers' comp insurance fraud

June 2, 2022

A New York construction company and its owner pleaded guilty June 1 to workers' compensation insurance fraud resulting in a loss of almost \$300,000 in premiums to two insurance providers.

DME Construction Associates entered a guilty plea to felony grand larceny and insurance fraud charges, while its owner, Peter Chardon, pleaded guilty to misdemeanor charges of petit larceny and insurance fraud.

[Read more](#) 

Washington State adopts emergency rules for heat, smoke hazards

June 3, 2022

Washington State's Department of Labor & Industries (L&I) has adopted emergency rules to address outdoor heat and smoke hazards throughout the summer of 2022.

Employers will be required to monitor temperature and air quality, take steps to protect workers from heat and smoke hazards and provide training and information from June 15 through the end of September.

[Read more](#) 

Worker failed to disclose all info on prior injury: Can he collect workers' comp?

June 3, 2022

Can an injured worker get workers' compensation benefits if they fail to fully disclose all of the information about a prior injury in the same part of the body? The New York Court of Appeals said they can't in a case decided May 12.

A worker with an injured shoulder can't collect benefits after he told medical providers about a prior shoulder injury but failed to tell them if he received treatment or identify where he may have received medical help.

[Read more](#) 



What can be done when workers are feeling the heat on a busy day?

Manager Mike Kelly was soaked with sweat even though he'd only just started his safety walk.

And it's only June, he thought. The temperature has to be around 90 and it isn't even noon yet.

Unfortunately, it was also a busy day in the warehouse and the crew was pushing hard to get the work done. It was up to Mike and the supervisors to make sure they didn't push too hard in this heat.

"Charlie, Winston, why don't you two go get some water and spend a few minutes in the lunch room where there's air conditioning," Mike said to two workers as he passed by. "You guys are looking a bit rough from the heat."

"Thanks, Mike," Charlie said. "But we really need to get this order out."

"Yeah," Winston said, wiping at the sweat on his brow. "If we stop now, it'll be too late to get this order on the truck."

"Then it'll have to be late," Mike replied. "It'll also be late if the two of you pass out or worse from the heat."

After convincing the two workers to go take a break, Mike made his way over to see the warehouse supervisor, Janet Costello.

'We're letting them take breaks despite how busy we are'

"Hey, Mike," Janet said as Mike entered the warehouse office. "Hot one today."

"Yes it is," Mike replied. "You're letting the guys take breaks, right?"

"Absolutely," Janet said, sounding almost offended that Mike thought otherwise. "Despite how busy we are, we're letting everyone take breaks whenever they need them."

"Some of them are pushing too hard," said Mike. "There's got to be another way to help them out in this heat."

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

Push hydration, rest

Mike should definitely continue to push hydration and rest in a cool area, but many safety pros would likely go a few steps further.

On top of providing water and a cool area to rest in, some safety pros will provide their workers with cooling towels, neck wraps, freeze pops and powdered electrolyte packs. Some even provide ice vests for employees who are working in excessively hot areas.

Sports drinks, like Gatorade, are also a great idea since they help immensely with the hydrating process.

Some state OSHAs, such as those in California and Oregon, require employers to provide water for employees when temperatures get to certain levels, so safety pros should keep state regulations in mind.

When it comes to cool areas to rest in, somewhere with air conditioning

is great, but outdoor workers may not have that luxury. In that case, a shady area that's cooler than the work area and protects workers from direct sunlight is a must.

There are state OSHAs that regulate what counts as shade for heat illness exposure in much the same way that they regulate employee hydration in extreme heat, so safety pros should check their state regulations for guidance on shade as well.

Federal OSHA could also weigh in on these things through the General Duty Clause, which says employers are required to provide employment free from recognized hazards that could cause death or serious physical harm. The agency announced its first ever heat-related National Emphasis Program on April 12, 2022.

Schedule work to avoid hottest time of day

If water and rest aren't cutting it, then it may be a good idea to send workers home early, if possible.

Employees could also be split up into groups and rotated through more strenuous types of work to help them avoid being overtaxed in the heat while also giving more opportunities for water and rest breaks.

This would involve monitoring the weather forecast and planning a schedule around it ahead of time, but it could be well worth the effort.

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

Did inadequate supervision lead to violation by subcontractor employees?



Safety Manager Pete Travers wiped the sweat from his brow as he closed the safety meeting.

"And remember water, rest and shade in this heat," Pete told the assembled group of workers. "Drink lots of water and take frequent rest breaks. If you're working outside, make sure those breaks are in the shade."

As he was finishing his speech, Pete could see John Jenkins, the company attorney, standing at the back of the room.

I bet he's waiting on me, Pete thought. It's never good news when he's waiting to talk to me.

'Violation didn't involve our employees'

"Hey, Pete, you have a moment?" John asked as he approached. "I need to talk to you about this OSHA citation."

"I'll be honest with you, I'm not sure what this citation is about," Pete said.

"I'm shocked," John said, honestly surprised Pete didn't have the details. "You always seem to know what's going on at our worksites."

"I didn't know about this," Pete said as he read the citation. "This is a fall protection violation that didn't involve our employees."

"Right," John replied. "A total of eight employees who worked for three different subcontractors that were contracted out by the contractor we hired to do the work. The inspector said those workers were in violation for about 10 to 15 minutes."

"And we're the general contractor, so OSHA is citing us as the controlling employer of a multi-employer worksite," Pete said. "I get it. The thing is, we had two supervisors making inspections all around the worksite that day."

"So it wasn't as though there wasn't anyone checking on them," John said.

"Exactly," said Pete. "Usually we have three supervisors inspecting the jobsite, but one was out for training that day."

"We can fight this," John said. "We had no actual or constructive knowledge of the violation. Supervisors can't be everywhere, right?"

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

The decision

Yes, Pete's company won when the Occupational Safety and Health Review Commission (OSHRC) found the company lacked constructive knowledge of the violation.

OSHA claimed the company, as the general contractor with control over the worksite, should have

been aware of the subcontractor employees' lack of fall protection. The agency said the company had constructive knowledge of the violation since its supervisors could have uncovered the infraction "with the exercise of reasonable diligence." In short, OSHA felt the supervisors' inspections were inadequate.

The company argued it had met its obligation to take reasonable measures to prevent this kind of violation since it had two, typically three, of its own supervisors regularly inspecting the worksite.

continued on next page

Did inadequate supervision lead to violation by subcontractor employees? (continued)



Continuous monitoring would've been required

The OSHRC agreed, finding that since the violation occurred “for only 10 to 15 minutes,” the company “would likely have had to continuously monitor” the work to discover the infraction during the limited timeframe, which is an obligation the OSHRC hasn’t even

extended to employers who exposed their own employees to a hazard.

Further, the contractor the company hired, who in turn hired the subcontractors, provided fall protection training to the subcontractor employees, and had

its own supervisors conduct safety inspections.

There was insufficient evidence to conclude the company was unjustified in relying on the contractor for those services.

Analysis: Supervisors, training, enforcement

Supervisors can't be everywhere at once and continuous monitoring of an employee or group of employees is rarely possible.

That's why safety training and enforcement of a company's safety rules are so important. Thorough training makes employees aware of hazards, how to spot them and even what they can do to mitigate or eliminate them. Enforcement lets employees know there are consequences for failing to adhere to their training and failing to follow the rules.

The combination of training and knowledge that rules will be enforced is meant to help fill the void when a supervisor can't be present to monitor and ensure workers are performing their job duties safely.

Based on: *Secretary of Labor v. Summit Contracting Group*, Occupational Safety and Health Review Commission, No. 18-1451, 5/10/22. Dramatized for effect.

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

Undocumented maintenance problems caused incident



HAZARDS

Fatal crash in mine shows importance of pre-op inspections



by Merriell Moyer

Pre-operation equipment inspections, along with a good maintenance program, are extremely important when it comes to employee safety, as a Nov. 1, 2021 fatal crash at West Virginia's Mountaineer II Mine illustrates.

An assistant maintenance shift supervisor at the mine who had 25 years of mining experience died when he lost control of an electric mine utility vehicle (EMU) that should have been taken out of service.

Investigators with the U.S. Mine Safety and Health Administration (MSHA) found the incident was caused, in part, by the mine operator's lack of procedures for pre-operation inspections and removing unsafe equipment from service to prevent miners from operating vehicles with known safety defects.

Crash caught on camera

On Nov. 1, 2021, Brian Wallen, an assistant maintenance shift supervisor at the Mountaineer II Mine, gathered his tools and supplies and took the No. 7 EMU, which had been parked outside of the maintenance shop, for transport down into the mine.

Surveillance video footage revealed Wallen entering the mine on the No. 7 EMU at 4:56 p.m. A short time later, another miner who was monitoring the video cameras noticed the overturned utility vehicle at the bottom of a slope deeper in the mine.

The miner attempted to radio Wallen, but was unsuccessful, so he radioed for help and directed the mine's in-house emergency response team members to the location of the crash.

Several inspections, no tagout

An MSHA investigation into the incident found that the No. 7 EMU had several maintenance-related issues that had been identified prior to Wallen's death but that hadn't been properly documented or addressed.

Between 4 p.m. Oct. 30, 2021, and 3 p.m. Nov. 1, 2021, the No. 7 EMU was found to:

- have its rear driver-side tire rubbing against a suspension spring
- make a popping sound when the brake pedal was pressed with the pedal going further to the floor than usual
- be leaking brake fluid

- have problems maintaining enough power to climb slopes, and
- have a battery wire that had burned off.

These problems were verbally communicated between several employees and maintenance technicians but the only problem that was fixed in this timeframe was the battery wire that had burned off being replaced with a new wire.

Several pre-operational inspections were performed but none of the issues with the No. 7 EMU were documented. That's one of the reasons the maintenance technician who fixed the wire didn't work on the brakes – simply because he wasn't aware there was a problem.

The vehicle was also never tagged out or removed from service during this time. Instead, it was left outside the maintenance shop where Wallen found it at about 5 p.m. on Nov. 1. Whether or not Wallen conducted a pre-operational inspection of the vehicle is unclear.

Unapproved modification caused problems

It's also worth mentioning that investigators found the No. 7 EMU had been modified, without manufacturer approval, from a two-passenger vehicle into a four-passenger vehicle. This increased the vehicle's gross weight while reducing the weight of its payload capacity.

None of this was documented, so employees weren't aware of the reduced payload. For the vehicle to operate safely after the modification while still hauling a typical payload at the mine, the vehicle operator would have to weigh less than 70 pounds.

This is what led to excess wear on the EMU's brakes, suspension and electrical systems.

Written inspection procedures now in place

MSHA investigators determined the combination of the steep slope and the condition of the EMU's brakes

caused Wallen to lose control of the vehicle, resulting in the fatal crash.

One of the two root causes identified was the fact that the mine operator didn't remove unsafe equipment from service to prevent use of vehicles with safety defects.

In response, the mine has developed written procedures to conduct pre-operational examinations – something that MSHA doesn't require for this type of vehicle – and properly remove faulty equipment from service. This includes a lockout/tagout procedure when safety defects are present.

The other root cause involved a lack of procedures for operating vehicles like the EMU on steep slopes, which the mine addressed by prohibiting operation of all self-propelled mobile equipment on such slopes.

[Read this story online](#) 

Defining safety excellence so you achieve it



To reach excellence in safety, first you have to define what it will look like.

Safety success has to be defined not only in results but in performance terms. It has to be defined in ways that are observable.

This is the way one company I worked with defined safety success:

If the bosses are interested ...

Similarly, the company also asked itself, what should safety look like to employees who are going to be with the company for only nine months?

The company boiled it down to four main things they wanted employees to do for safety:


- always wear the right hand PPE
- keep your eyes in the direction you're traveling
- keep out of the path of rotating or moving equipment, and
- pay attention to what you're standing, walking or climbing on.

Any employee who was on the job site for a month knew these four things because they were emphasized over and over again.

One client was so impressed with what they saw regarding safety that they awarded the construction company an extension of their project.

Safety became a competitive advantage to the organization.

(Based on a presentation by Shawn Galloway, CEO, ProAct Safety, Houston, at the National Safety Council's 2021 Safety Congress)

[Read More Case Studies in your Membership Dashboard](#) 



How did young worker fall into scalding hot asphalt pit?

The sun shone brightly on a breezy, warm morning at Allied Asphalt. Production was humming along as Foreman Chuck Vogel looked and listened to the conveyor belts stretching 30 feet up to multiple asphalt silos.

Is that what I think it sounds like? Chuck thought to himself.

He stopped at silo No. 3 and peered up. The CHUNK-A-CHUNK sounds told him that debris of some kind was stopping the belt from moving asphalt efficiently. He climbed up the ladder to take a look.

Yep. Big clog up here, Chuck thought. He switched off the conveyor and pulled out his handheld radio.

"Who's available to come clear out the conveyor at silo No. 3? Over," he asked.

"No one," came a reply. "We're all busy! Over."

"Cut the comedy, will ya?" said Chuck. "I know we're light but this is an emergency. Who can you spare? Over."

"Hang on," said the co-worker. "We can send over Jimmy if you want. Over."

Jimmy was the youngest crew member but a hard worker and well-liked. "OK that's fine, send him. Thanks."

'Don't start up the conveyor until you're done'

"Have you cleared one of these jams before?" asked Chuck.

"Oh yes, a couple of times," Jimmy replied. "I'm supposed to use this break pole."

"That's right, you don't need to lean over if you use the pole," said Chuck. "The Dumpster should catch most, maybe all of the debris. Take a look and sweep up down on the ground when you're done."

"Got it," said Jimmy.

"Most importantly, do not start up the conveyor," said Chuck. "Come find me when you're done and I'll take a look at the belt before we re-start."

"Yessir," said Jimmy. Chuck climbed down the ladder and went to check on other jobs.

No one's seen hide nor hair of co-worker

Half an hour or so later, Chuck checked on silo No. 3. He didn't see Jimmy nearby.

And worse, the conveyor was humming along again.

continued on next page



How did young worker fall into scalding hot asphalt pit? (continued)

Did Jimmy do that?! Chuck thought.

"Has anyone seen Jimmy? Over!" Chuck barked into his handheld radio.

"We sent him to silo No. 3," came the reply. "Isn't he there? Over."

"No!" said Chuck.

After a minute, the co-worker said, "I asked around. No one's seen him. Over."

"No one's seen him ...," said Chuck. Terror gripped him as he dropped the radio and scrambled up the ladder.

Half of Jimmy's shirt was hanging off the drop of the conveyor. Chuck looked down and saw what looked like a body floating in asphalt.

The crew spent the next hour combing the worksite to find Jimmy and called around to see if he'd left.

All signs pointed to Jimmy lying dead in the asphalt silo, which the crew confirmed later that day.

Bottom line: Company didn't evaluate danger properly and worker paid the ultimate price

The post-accident investigation found Jimmy didn't deliberately start up the conveyor. While clearing the jam, the system started up again, possibly triggered by Jimmy using the jam pole.


The conveyor caught hold of Jimmy's clothing and pulled him before he could respond. The 18-year-old fell into the asphalt silo.

Emergency crews couldn't enter the silo to retrieve his body because of temperatures above 300 degrees. They needed to drain the silo first before they could find his body and return it to his family.

OSHA pegged the tragic accident on lack of lockout/tagout procedures. The company was fined for failure to:

- develop and use procedures for controlling hazardous energy when servicing or cleaning the asphalt conveyor system
- train workers adequately on requirements for controlling hazardous energy, and
- apply energy isolation devices.

OSHA fine: \$370,347. The company's legal bills for a wrongful death lawsuit brought the by the deceased workers' family could easily triple that amount.

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

HAZARDS

Feds: Failure to lock out equipment led to miner's death



by Merriell Moyer



A mine operator's failure to ensure lock out of equipment against hazardous motion before performing repairs led to a fatality when a miner became entangled in the rotating drill of a roof bolting machine.

The U.S. Mine Safety and Health Administration (MSHA) found the mine operator also failed to provide miners with adequate task training in the safe operation of the equipment.

Miner was concerned about hydraulic leaks

On Dec. 13, 2021, William Dutton, a miner with more than four years of mining experience at the Whitestone Mine No. 4, went to the 740-parking area to get a roof bolting machine he was going to operate as part of his job duties. The 740-parking area is a place reserved for parking, service and repair of mining equipment.

Dutton hadn't used the roof bolting machine for a few months and during his pre-operational inspection he found a leaking O-ring seal, which he replaced. After fixing the leak, he moved the vehicle about 1,000 feet where he began installing roof bolts, which are used to stabilize mine tunnels.

At 7 a.m. a mechanic passed by Dutton who had returned to an area near the 740-parking area where he parked the roof bolting machine. The mechanic stopped to see if there was a problem and Dutton told him

there was a leaking hydraulic hose near the drill, which the mechanic then replaced.

Shirt, safety vest entangled in drill

Almost two hours later, a supervisor and another mechanic drove by the 740-parking area and saw the roof bolting machine parked there. They could see Dutton outside of the vehicle's cab, standing near the drill. When they approached, they noticed the machine was running and that Dutton's shirt and safety vest had become entangled in the drill.

Dutton was unresponsive. The two men managed to get him freed from the drill after they hit the emergency stop on the machine. They lowered him to the ground and began performing CPR until paramedics arrived at 9:27 a.m.

The paramedics hooked Dutton up to an automated external

defibrillator (AED), but found that he couldn't be revived. Dutton was declared deceased at 10:26 a.m.

MSHA investigators found that based on the evidence, Dutton had exited the cab of the roof bolting machine with the equipment running to make sure all of the leaks had been repaired. When he approached the rotating drill, it entangled his shirt and safety vest, pulling him tightly against the machine and causing asphyxiation.

Lockout rules, new training now in place

To safely evaluate the repairs, investigators said the power should have been de-energized with a lockout of the equipment, which should have also been blocked against any hazardous motion.

During review of training records, the investigators also found that Dutton had received the required

MSHA training, but that the task training he'd received on roof bolting machines was inadequate.

The task training didn't use the manufacturer's manual for the specific roof bolting machine, which said to "stay clear of rotating drivelines ... stop engine and be sure driveline is stopped before performing maintenance. Keep hands, feet, hair and clothing clear of rotating parts."

In response to these two root causes, the mine operator developed written procedures for de-energizing, lockout and blocking equipment against hazardous motion before repairs begin.

The mine operator also completely revised its training plan and now includes manufacturer manuals in all equipment training.

[Read this story online](#) 

Safety|NewsAlert

Employees' Top 10 Safety Excuses And How to Counter Them

And How to Counter Them

SAFETY MANAGEMENT



Exclusive Safety News Alert Guide

Employees' Top 10 Safety Excuses And How To Counter Them

This Essential Insights gives you the Top 10 safety excuses workers use today – and how you can counter them to create a safer, more productive workplace free from OSHA fines.

[get the guide](#) 



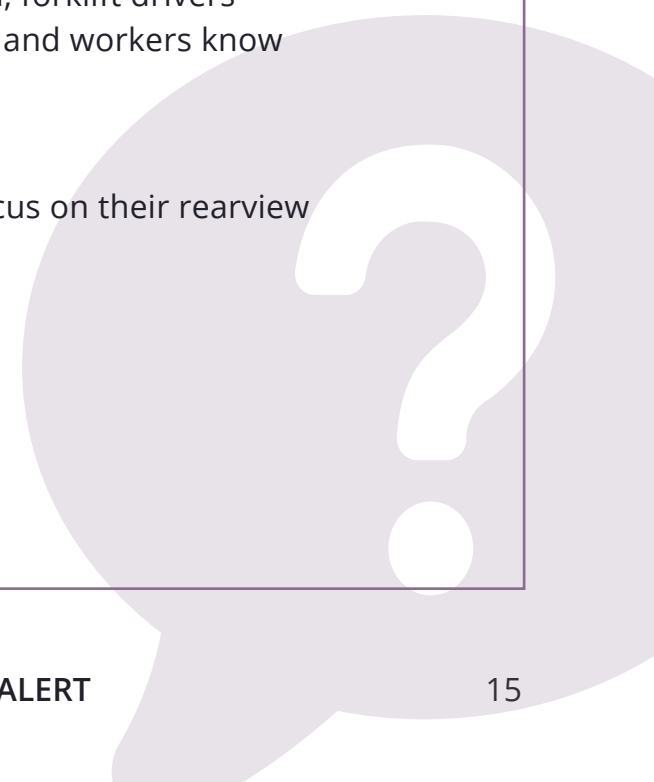
Forklift safety: Are workers alert when they're in work areas?

Forklifts often operate in high-traffic areas. That poses risks to co-workers and other drivers.

Have your drivers and those who work around them take this quiz so they know how to stay safe around moving lifts.

- 1 TRUE OR FALSE:** If two forklifts are operating in the same area, they should remain close enough for drivers to communicate clearly.
- 2 TRUE OR FALSE:** The forklift operator is responsible for the safety of pedestrian workers when the lift's in motion.
- 3 TRUE OR FALSE:** When approaching an intersection, forklift drivers should shout out a verbal warning so other drivers and workers know to keep clear.
- 4 TRUE OR FALSE:** When backing up, drivers must focus on their rearview mirror to make sure they don't hit anyone.

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



Test Your Knowledge



- 1 FALSE:** If two or more forklifts must share an area, they should remain a safe braking distance from each other at all times, approximately three truck lengths.
- 2 TRUE:** In areas where workers are both on foot and on forklifts, the forklift operator is responsible for pedestrian safety. For their part, pedestrians should stay within designated walking areas.
- 3 FALSE:** At cross intersections, forklift drivers should slow down and sound the horn to warn pedestrians or other drivers they're approaching.
- 4 FALSE:** Forklift drivers should be facing in the direction the lift is traveling at all times. Mirrors should only be used for a quick reference or before the lift is in motion.

[Read more Test Your Knowledge in your Membership Dashboard](#) 



Who Got Fined & Why

Working with hazardous chemicals means the bar is higher: Firm fined \$98K

When OSHA says your chemical safety program isn't up to snuff, you can't negotiate. A Pennsylvania manufacturer that's already been fined twice before is learning that lesson.

What happened: OSHA paid a visit to Strong Industries, a hot tub manufacturer in Northumberland, Pennsylvania. The company was cited before for lack of engineering controls to prevent exposure to hazardous chemicals. Based on OSHA's inspection, the company failed to:

- ensure employees wore tight-fitting facepiece respirators
- fit test respirators annually
- prevent exposure to unsafe chemical levels
- install engineering controls in a paint booth, and
- retain records of respirator fit-testing.

Result: The company's out \$98,905 for two repeat violations, and one serious violation.

Note: Overexposure to methylene bisphenyl diisocyanate can cause hypersensitivity pneumonitis and occupational asthma, according to OSHA.

Builder ignored asbestos report and put the work crew in danger

A building contractor pleaded guilty to demolishing a shuttered weaving mill before safely removing asbestos.

What happened: A Pennsylvania school district bought the old mill and obtained an environmental assessment report that identified asbestos. It shared the report with the contractor Lobar out of Dillsburg, PA. But the contractor didn't put necessary asbestos safety steps into practice before it demolished the mill to construct a new school on the space. Workers should've been provided with personal protective equipment to prevent inhaling asbestos fibers, and asbestos-containing waste should've been kept wet and bagged separately from normal trash.

Result: A 10-count indictment named Lobar, the general contractor on the demolition project, and nine other contractors liable for violating the Clean Air Act's requirements for asbestos. The trial is scheduled to begin this June.

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



Time-saving shortcut proves deadly: Was company to blame?

"We're never going to finish this job," said Walter Tenant as he lowered the aerial lift. "It's impossible."

Bradley Kingsman rolled his eyes. "Don't be so dramatic," he said. "It's not the first time we've done this."

"I'm telling you there's gotta be a quicker way," Walter said, sounding exasperated.

Looked to be an all-day job

Walter and Bradley were installing new rain gutters around a large facility. They were using a lift that extended 40 feet in the air to reach the building's roof.

To install the gutters, they'd raise the lift, work on a narrow section of roof, then bring the lift back down to ground level, move it a few feet forward and repeat the process all over again.

"Well, if you've got a better idea, I'm all ears," Bradley said, putting another 5-foot-long section of gutter into the lift basket. "Until then, quit complaining."

"OK, how about this," Walter replied. "Grab me four more sections of gutter."

"Uh-oh, I can see already you're getting one of your all-time bad ideas," Bradley joked. He gathered the sections and loaded them in the basket anyway.

"I think you mean one of my brilliant, time-saving tricks," Walter said. "I'll install this section and you stay down here. When I'm done, just push the lift over five feet and I'll do the next section, too."

"That's exactly what the Supervisor told us not to do," Bradley said. "Come on, man, let's just do it like we're supposed to. What's the big rush anyway?"

Walter was already raising the lift up to the roof. "My way's better," he said. "You'll see."

'We're making great time'

Walter installed the next section and called down to his co-worker, "OK! Move it forward!"

Bradley pulled up the stabilizing outriggers from either end of the lift and gently piloted it forward. Once it was in place, he quickly put the outriggers down again, securing it.

"See?" Walter said. "We're making great time."

"Whatever," Bradley said, starting to wonder what he was so worried about.

Walter secured the next section. "All right, keep going!" he yelled down. "You can thank me later."

Bradley lifted the outriggers and moved the lift again. But this time the front right tire hit a divot in the ground, causing the basket above to sway and shake.

"Whoa, watch it down there!" Walter yelled.

continued on next page



Time-saving shortcut proves deadly: Was company to blame?

Bradley first tried piloting the lift forward, but that only made it shake even more. He tried lowering the outriggers, but it was no use.

The lift basket swayed one last time before toppling over, sending Walter crashing down in the basket. He was killed the moment he struck the ground.

Court: Worker misused equipment

Walter's family sued the company and the lift manufacturer, saying the equipment was too dangerous.

Result: A jury awarded the family \$1.3 million. But on appeals, that verdict was tossed out.

The court said the machine itself wasn't dangerous: The actions of the workers using it made it unsafe. Thus the company and the manufacturer were saved from paying up.

Key: Regardless of how much instruction you give workers, there's always a chance they'll try to break the rules.

As a Supervisor, you can discourage that by stressing how your safety program keeps workers safe rather than emphasizing rules only and having an easy-to-navigate system for workers to recommend changes to processes.

Based on Genie Industries v. Matak.

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TRAINING

Are there benefits to regular safety training? Recent incidents point to yes



by Merriell Moyer



You hear it all the time: “Why do we have to do this safety training? I’ve done this job for years. I know how to be safe.” Sometimes workers, and even management, see regular safety training as a waste of time, but safety pros know better.

Those who complain don’t understand that:

- there’s value in refreshing training on a regular basis to make sure it isn’t forgotten, and
- such training helps to reinforce the rules and the company’s stance on safe work practices.

When it comes to specific training, like re-certifying forklift operators, there really isn’t a choice since it’s required by OSHA. Even if it wasn’t

required, making sure workers who operate dangerous equipment get refresher training every so often just makes sense. After all, one mistake could cause a serious injury or death.

And while there’s certainly credence to the argument that people can become numb to a topic if they’re constantly inundated with it, safety

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training doesn't have to cover the exact same topic every time.

A range of safety topics can apply generally to most, if not all, employees. Forklift operators can benefit from hearing about same-level slips, trips and falls in the same way that non-operators can benefit from discussion regarding forklift/pedestrian etiquette. There are plenty of general safety topics to help with diversifying training.

Training combines well with experience

Really, though, what is the benefit of having regular safety training, including toolbox talks and safety meetings?

Here's an example:

Wyatt, a truck driver who frequently transported heavy equipment to construction sites, picked up a 3-ton skid steer to take to a worksite.

After a few other employees loaded the skid steer, Wyatt felt it wasn't square on the trailer and pointed it out to the loading crew.

The loading crew said they were too busy to make adjustments, so Wyatt spoke with his supervisor, who said, "If you drive the speed limit and stay in the right lane, that shouldn't be a problem."

Wyatt wasn't convinced, but he did as he was told and drove off with the improperly loaded skid steer. As he drove down the highway, Wyatt noticed the skid steer bouncing around on the trailer, which

eventually caused it to fall off and onto a car.

The driver was injured and could have been killed. A lawsuit resulting from the incident cost the company \$1 million.

What does that have to do with training? Wyatt's hunch about the skid steer being loaded incorrectly was likely based on both his training and years of experience.

When employees combine their years of experience doing a particular job with regular safety training they'll be much more likely to spot a hazard when it presents itself. And hopefully they'll be like Wyatt and point it out. Although, Wyatt would have been better off if he'd insisted on not moving the trailer unless the skid steer was loaded correctly.

Getting everyone on the same page

Regular safety training also ensures employees and management are on the same page when it comes to safety rules.

Misunderstandings about safety rules can lead to disaster, as a 2019 fatal railyard incident illustrates. The National Transportation Safety Board (NTSB) investigated and found that the railroad company's lack of clear procedures was the root cause.

The incident occurred when a conductor rode on the side of a railcar in an area of close clearance, which resulted in his death when the

distance between the railcar he was riding on and an adjacent parked railcar narrowed down to 9 inches.

While the company had rules for working in close-clearance areas, investigators found those rules were confusing and led the conductor to think he was in a safe area when he really wasn't.

Regular safety training can help clear up this kind of confusion and can help safety pros and management notice when rules are unclear so they can make changes before an incident happens.

Some ways to make sure everyone is clear on the rules is to:

- verbally explain what they need to do
- put it in writing so workers have a go-to resource for any later questions and there's documentation they've been trained, and
- have a hands-on demonstration so they can try the steps before they get to work.

And don't be afraid to inject a little humor. Sometimes that can help training to stick in an employee's mind.

Take these safety slogans from the U.S. Navy, for example:

- Working safely is like breathing: You never want it to stop.
- If you think safety is a pain, try a leg fracture.

Are there benefits to regular safety training? Recent incidents point to yes

- Alert today, alive tomorrow.
- Electricity can turn you off.
- A safer you is a safer me.
- A worker who doesn't follow safety rules is a fugitive from the law of averages.

According to Vector Solutions, a provider of Learning Management Systems, ensuring that every employee at your organization is properly trained and up to date on safety standards and procedures can help reduce safety incidents and injuries. Training makes employees aware of potential safety hazards. Finding ways to reinforce training throughout the year can also help keep these important safety procedures top-of-mind. Additionally, maintaining proper training documentation can serve as proof that you've taken the necessary steps to avoid a violation, should an inspection come to that.

One part of an overall program

One thing to take note of when it comes to training is that it is not the end-all, be-all of safety, which is something safety pros already know. Training has to be part of an overall safety program, not the sole solution for all safety needs.

A recent case that came before the Occupational Safety and Health Review Commission (OSHRC) illustrates this fact.

The case involved a warehouse that used standup forklifts to drop pallets down from storage racks. The horizontal beams on the lowest tier of the racks was high enough that the forklift operator's compartment could slide under it, causing an under-ride hazard.

This under-ride hazard caused a previous crushing injury for one forklift operator, so the company made sure to train its operators on

the hazard. However, it didn't take any other precautions, and another operator got killed when his forklift went under a rack and crushed him between the beam and the forklift.

OSHA issued a citation, and in front of an administrative law judge with the OSHRC, the company argued the citation should be vacated since training was conducted to make forklift operators aware of the under-ride hazard.

But the judge found the company didn't take all the necessary steps needed to address the hazard and upheld the citation and a \$13,260 fine.

In this case, training wasn't enough. Engineering controls of some kind – upright posts added to the forklift or lowering the horizontal beams – were needed along with the training to truly address the hazard.

[Read this story online](#) 

Toolbox talk tips: The 3 ways to promote learning best



How can you make sure your safety message sticks with workers?

Give them every instruction in three separate ways:

- Verbally to explain what they need to do
- In writing so they have a go-to resource for any later questions and you have the documentation they've been trained, and
- In a hands-on demonstration so they can try the steps before they get to work.

7 habits of a great safety supervisor


When you become a supervisor, there's no manual explaining everything you need to know.

Learning the best way to lead your people and help them stay safe takes a whole lot of trial and error.

But mastering these skills will help boost safety and make you an effective supervisor.

Here are seven of the most important things supervisors need to have down pat:

- **Know the regs.** Study up on the rules set by OSHA (or your industry's watchdog). Make sure you always have a current hard copy handy – either for your own reference or workers who may need guidance.
- **Assess risks.** This includes picking the right PPE for the job and making sure workers know how to use and maintain it.
- **Recognize who has 'it.'** It should be clear within five days if an employee will work safely. If not, cut ties immediately. Otherwise, it could take 10 years to get rid of a worker who's a danger to himself and others.
- **Coach and correct.** In most cases, positive reinforcement will teach safety lessons more effectively than a hard-line approach.
- **Be prepared.** Know what to do in an emergency. Then make sure your people know, too. You can never rehearse too much.
- **Make safety proactive.** Teach workers to recognize signs of danger. Don't rely on incentive programs to keep them safe.
- **Know the culture.** Know your organization's safety culture and live it every day.

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LEGAL

Law will require employers to disclose quota info to warehouse workers



by Merriell Moyer



MEANT TO
ADDRESS RAPID
GROWTH OF
'JUST-IN-TIME
LOGISTICS'

New York is on the verge of passing a law requiring employers to disclose production quotas to warehouse workers and allow those workers to take required breaks without punishment.

The Warehouse Worker Protection Act (WWPA) is expected to soon be signed into law by Governor Kathy Hochul and would take effect 60 days later.

This law is meant to address the “rapid growth of just-in-time logistics

and same- and next-day consumer package delivery” by regulating companies that use quotas at warehouses and logistics centers, according to law firm Seyfarth Shaw.

Companies like Amazon have come under fire over the past few years due to climbing injury rates in their distribution centers, which are often blamed on quota systems that require employees to work too quickly.

California introduced a similar law on warehouse quotas in

September 2021, which went into effect January 2022.

What is a quota?

Under the WWPA, warehouse employers with quotas would have to:

- provide notice of those quotas to employees, and
- refrain from using quotas that would prevent employees from taking breaks.

This applies to any employer who controls the wages, hours or working conditions of 100 or more employees at a single warehouse distribution center or 500 or more employees at one or more warehouse distribution centers in the state.

Quotas are defined as work standards requiring employees to perform at a specified productivity speed, or where their actions are categorized by the time they spend performing, or not performing, tasks, and failure to complete a task performance standard would have an adverse impact on their employment.

Warehouse distribution centers are defined under the WWPA by the North American Industry Classification System Codes based on industry:

- Code 493 for warehousing and storage
- Code 423 for merchant wholesalers, durable goods
- Code 424 for merchant wholesalers, nondurable goods
- Code 454,110 for electronic shopping and mail-order houses, or
- Code 492,110 for couriers and express delivery services.

Records of employee work speed must be kept

Employers will be required to provide written descriptions of each quota and the adverse employment action that could result if the employee fails to meet that quota. Notice regarding quotas will have to be provided to current employees within 30 days of the effective date of the WWPA, when new employees begin work and within two days of any changes to the quota.

If an employer takes adverse employment action based on the quota, it must provide the employee with the quota that applies to them. If an employee is terminated or otherwise separates from employment, records covering the six-month period prior to the date of separation must be kept for three years and made available to the state's Commissioner of Labor on request.

Employers will also be required to "maintain records of each employee's work speed data, aggregated work speed data for similar employees at the same establishment, and the required written notices of the quotas."

Current and former employees would have the right to request a written description of each quota they were subjected to, a copy of

their personal work speed data and a copy of the aggregated work speed data.

An employee "may not be required to meet a quota that prevents them from taking meal or rest periods or using the bathroom, including reasonable time to get to and from the bathroom."

Violations lead to civil, criminal penalties

The bill also contains language prohibiting employers from retaliating against workers who exercise these rights.

The WWPA doesn't include a private right of action by employees to enforce these rights in court. Instead, it authorizes the state Labor Commissioner to assess civil penalties of:

- up to \$100 for a first offense, and \$500 for subsequent offenses
- penalties up to \$20,000 for retaliation, and
- penalties up to 100% of unpaid wages.

The bill also provides for criminal penalties for violators.

[Read this story online](#) 

‘Where’s your PPE?’ OSHA places blame for molten plastic burns on company

Liquid plastic splashed onto an employee’s exposed skin and severely burned him. OSHA put the blame squarely on the manufacturing facility’s lax safety program and put the company into its Severe Violator Enforcement Program.

What happened: An employee who was changing screens on the extruder lines of a plastic extrusion machine suffered severe burns when hot molten plastic sprayed him. He wasn’t wearing a balaclava or welding jacket for protection, which is standard practice in this industry.

Result: Berry Global, a plastic packaging manufacturer with plants in multiple states, isn’t a stranger to OSHA inspections. It’s been cited for lockout/tagout and PPE violations on two other occasions. OSHA found a wide range of safety hazards following this burn injury at Berry’s factory in Sterling, Massachusetts. It ticketed the company for not:

- using lockout/tagout (LOTO) procedures or otherwise eliminating employee exposure while they were servicing or maintaining the extruder machine
- training workers on LOTO procedures
- conducting inspections to ensure rules were being followed, and
- providing appropriate PPE.

Note: Total fines for this burn incident and resulting inspection resulted in a whopping \$370K fine. The company contested previous OSHA fines and may do so again. OSHA is placing Berry in its Severe Violator Enforcement Program, which means follow-up inspections at all of its facilities are coming down the pike. Failure to abate safety hazards are sure to prompt more penalties and potentially prosecution.

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



Seller left behind chemical safety violations: Buyer is left holding the bag

The key issue for any company weighing whether to buy an existing business and its facilities is always going to be profitability.

Just make sure decision makers don't underestimate compliance issues – doing so can cost you a bundle!

Did company do its homework?

Smithfield Packaged Meats bought the former Farmer John animal slaughtering and meatpacking plant in Vernon, California in 2017.

We don't know if Smithfield conducted a thorough plant audit, or if it did make note of numerous violations, decided to go operational and not worry about inspectors dropping by.

Nine months after the sale went through, EPA inspectors came out for a look-see.

Worn-out & malfunctioning parts

Turns out most of the meat packing plant's violations under the Clean Air Act's Risk Management Plan rule could've been corrected with a robust preventive maintenance program and timely repairs.

EPA cited Smithfield and its sister company Clougherty Packing for failure to:

- identify leaks and related hazards in emergency exhaust pipes and pressure relief valves
- repair a malfunctioning anhydrous ammonia sensor needed to alert employees of a leak
- replace cracked and missing insulation
- properly seal doors
- protect electrical equipment
- replace corroded piping
- properly label process and emergency equipment, and
- keep process safety information for the facility's alarms, process equipment and emergency ventilation system.

Can't avoid paying the piper

Smithfield corrected all of the violations and emergency responders are up to date on the plant's chemical stock. Despite these actions, it must pay \$237,537 in fines.

Regulated sites in a similar situation as Smithfield may want to take advantage of EPA's audit policy program and avoid fines.

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about ^{News & Training} SafetyAlert

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

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

But we don't stop there.

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

Meet Our Editors



Merriell Moyer

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



Scott Ball

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

Get In Touch

Phone:
484-207-6261

Email Customer Support:
support@safetynewsalert.com

Mailing Address:
660 American Avenue, Suite 203
King of Prussia, PA 19406

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