

OSHA Compliance NEWS

The No. 1 source of actionable information to help managers stay current with safety regulations

Sample Issue

Top NEWS

Man fired less than a week after speaking to regulators
A company that fired a worker less than a week after he had a conversation with a safety regulator about alleged workplace hazards has lost the appeal of a citation it received for violating whistleblower protection laws. (See Safety News on page 2.)

Poor emergency planning could send executives to jail
Two top executives and a company have been indicted for their roles in an explosion during Hurricane Harvey. (See Safety News on page 2.)

OSHA targeted enforcement efforts found to be effective
Companies targeted under an OSHA enforcement program showed more improvement in worker safety behaviors than those not included in the program, according to new research. (See Trends to Watch on page 3.)

Equipment not locked out; worker pulled to his death
An OSHA inspector knocked on a company's door after a staffer was fatally pulled into a machine that hadn't been locked out. (See Mistakes That Hurt on page 3.)

OSHA announces demise of whistle-blower committee
In a recent letter, an OSHA official acknowledged that the Whistle-blower Protection Advisory Committee has been replaced by stakeholder meetings. (See Federal Regulatory Notices on page 4.)

Study: Injured workers more likely to overdose on opioids

More proof of the high value of your efforts to protect staffers

Heads up: Your efforts to prevent injuries not only help workers go home at the end of the day, but they also reduce the chances that employees will overdose on opioids.

That's your takeaway from a recently released examination of overdose deaths. Researchers with the Massachusetts Department of Public Health looked at death certificates issued in the state between 2011 and 2015.

They examined the reasons for the fatality and the occupations of the deceased and identified 4,302 certificates that indicated opioid overdose

as the cause of death.

What they found: Workers in industries with high injury rates had significantly higher rates of overdose deaths than those in other industries.

Six times higher

For example, the opioid death rate in the construction industry was 150.6 fatalities for every 100,000 workers, which was six times higher than the average death rate of 25.1 for employees in all industries.

Other industries with higher-than-average fatality rates included:

- agriculture, forestry, fishing and hunting: 107.5

(for every 100,000 workers)

- transportation and warehousing: 48.3
- waste management services: 43.1

The researchers suggested that the higher death rates in industries that also have higher injury rates indicates that people are taking opioids in order to reduce the pain so they can keep working.

What it means to you: Don't forget the value of properly managing return-to-work programs for injured staffers. People who come back to work before they're fully healed are more likely to abuse opioids and overdose.

Litigation

Expect two industry lawsuits over injury-reporting rule to be revived

Get ready for the revival of two industry lawsuits that challenged OSHA's record-keeping rule.

Dissatisfied with OSHA's recently unveiled proposal, industry groups are expected to reignite two lawsuits that argued that OSHA didn't have the authority to issue the regulation to begin with. Both lawsuits had been put

on hold pending the release of OSHA's proposal.

Sticking point

The sticking point is OSHA's failure to remove anti-retaliation provisions from the May 2016 rule. Under the provisions, employers that have safety incentive and drug testing programs could be fined.

Industry groups were

blindsided when the provisions weren't removed, so they'll probably go back to court in the near future.

Your best bet: While you should continue your drug testing and safety incentive programs for now, keep in mind that any aspects of the programs that could discourage injury reporting might face OSHA scrutiny.



Court: Company failed to justify termination of safety whistle-blower

A recent court ruling shows the importance of making sure workers aren't fired after contacting safety regulators – unless you can bulletproof the reasons for letting them go.

The case involved a worker at a Con-Ag mine in St. Mary's, OH. Over a period of several months, the employee filed verbal and written complaints with MSHA about alleged safety deficiencies.

Less than a week after his final conversation with an MSHA inspector, the staffer was fired because he allegedly threatened a coworker and a manager.

After MSHA cited Con-

Ag for violation of whistleblower protection laws, the company appealed the citation to the Federal Mine Safety and Health Commission and an appeals court.

The commission and the court turned down the appeals, pointing out that the employer failed to follow its own corporate policies during its investigation of the incident that led to the firing, casting doubt on its justification for dismissing the worker.

Based on Con-Ag, Inc., v. Secretary of Labor.

Poor emergency plan could cause managers to be sent to the slammer

Now might be a good time to confirm that your

emergency response plan accounts for as many weather-related scenarios as you can possibly think of.

By doing so, you'll avoid the fate of Arkema North America and company executives Richard Rowe and Leslie Comardelle. The company and its managers have been indicted by a grand jury for their roles in an explosion at Arkema's Crosby, TX, facility following Hurricane Harvey in August 2017 that caused 21 people to be hospitalized and 200 homes to be evacuated.

The indictment says that the company and the managers weren't ready for the unprecedented flooding of the facility that caused a power blackout

and led to the ignition of a chemical that required storage in a refrigerated warehouse in order to remain stable.

If convicted, the men face up to five years in jail.

Why you need to make sure contractors have solid safety records

A recently released document from the U.S. Chemical Safety Board (CSB) points to the importance of verifying the safety records of all the contractors you use.

The Safety Digest summarizes two incident investigations in which CSB concluded that poor contractor selection and oversight led to 10 deaths and four injuries.

You make the call

Did employer have to ensure man wore slip-resistant shoes?

"It's common sense to not wear cowboy boots to work," said Ralph, the safety manager. "Caleb has to take full responsibility for his slip-and-fall injury."

"It sounds like you're blaming the worker for your deficient safety program," said Alice, the compliance officer.

"It's not a blame game," said Ralph. "It's simply a matter of using common sense."

"According to my investigation," said Alice, "your worker Caleb was traversing a slippery floor when he slipped and fell."

"That's correct," said Ralph. "Caleb was wearing cowboy boots rather than slip-resistant boots."

"Did you supply Caleb with slip-resistant shoes?" asked Alice.

"No," said Ralph. "We're not required to provide workers with shoes; they supply their own safety gear."

Eliminate hazards

"But our regulations require that workers wear safe shoes," said Alice. "If they don't do so, you're on the hook for any injuries."

"We couldn't have

anticipated that Caleb would wear cowboy boots to work and then slip and fall," said Ralph.

"I disagree," said Alice. "I spoke to some of your people, and they told me of several close calls in the same area where Caleb fell. You knew the floor was slippery. I'm citing you."

"Yes, the floor can get wet in that area," said Ralph, "but we have to trust that workers will behave safely. We'll fight your fine."

Did the company win?

■ *Make your call, then please turn to page 4 for the court's ruling.*

OSHA Compliance NEWS

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OSHA Compliance News is published 24 times per year by Institute of Business Publications, P.O. Box 1340, Havertown, PA 19083; PHONE: 484-472-8227; FAX: 484-472-8708.

[Click Here to Subscribe Now](#)

Rate (for 24 issues): \$249/year

Phone: 866-572-1352

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trends to watch

■ ENFORCEMENT Targeted programs found to be effective

Do OSHA targeted enforcement programs actually improve worker safety behaviors?

Yes, according to a recent study by the Migrants Clinicians Network, Salisbury, MD. To examine the effects of an OSHA local emphasis program (LEP) that targeted hazards faced by dairy farm workers in New York, researchers interviewed officials from two types of farm operations: those included in the LEP and those not included in it.

Farms not targeted under the LEP reported a median expenditure on

facility and safety upgrades of about \$4,000 following the LEP, while those targeted under the LEP reported a median investment of \$10,000 in safety-related upgrades.

More than half of the inspected farms said there were noticeable changes in workers' behaviors following the LEP, while 100% of the targeted farms said their operation had benefited from the LEP experience.

■ FATALITY RATES Does medical cannabis lead to fewer deaths?

Hard to believe! The legalization of medical marijuana might actually help reduce the number of workplace fatalities.

This surprising conclusion was drawn from a recent study by Montana State University, Bozeman, MT. Using Bureau of Labor Statistics data from 1992 to 2015, researchers found that workplace deaths declined about 34% after a state legalized medical marijuana.

The effect was greater in states that included pain as a qualifying condition for medical cannabis. For instance, the use of medical marijuana was associated with a 19.8% reduction in the expected number of deaths among workers 25 to 44 years old if pain was listed as a qualifying condition for cannabis.



quick ideas

Provide reminders for reapplying sunscreen

Encourage supervisors to ask staffers who work outdoors to set their cellphones or watches to sound an alarm every two hours.

Reason: The alarm will help them remember to reapply sunscreen.

Steps to follow before lowering aerial lifts

At their next training session on aerial lift safety, supervisors should remind lift operators of several important safety steps they should follow before lowering the platform.

Lift operators should first look below to confirm that nothing will

block the descent. And they should routinely provide voice or audible alarm warnings before lowering the device.

Bonus: If a crew has been working as a team, the operator should confirm the location of all the other team members before descending.

Three-point rule for fitting safety eyewear

When selecting safety eyewear, crew members should keep the three-point rule in mind. The frame should touch the face in three places: at the bridge of the nose and behind each ear.

In addition, the sidepieces on the eyewear should wrap around the

head, with slight pressure behind the ear, not above the ear.

Personalized stories of workplace deaths

Here's a way for supervisors to get their crew members more involved in their safety meetings.

First, managers find a story about a recent workplace fatality. Then they tell that story to their group – with a twist.

Instead of using the real names of the people in the story, supervisors substitute the names of meeting attendees. That'll help personalize the story for the group, and decrease the chances of fatal safety errors.

Ouch! mistakes that hurt

▶ Worker pulled into dangerous machine

How specific are the lockout/tagout procedures for the hazardous machines used in your operation? Keep in mind that OSHA requires that procedures be as specific as possible for each device.

Organization: Genan, Inc., Houston.

Business: Tire recycler.

Agency: OSHA.

Penalty: \$204,549 (proposed).

Reason for fine: Energy control procedures didn't clearly and specifically outline the steps for shutting down, isolating, blocking out and securing equipment.

Note: OSHA paid a visit to the facility after the agency learned that a worker had been fatally injured when he was pulled into a dangerous machine that hadn't been properly locked out. The victim was trying to clear an equipment jam.

▶ Poorly illuminated emergency exit sign

Consider periodic walkthroughs of your operation in order to confirm that emergency exit signs are in good working order. If a sign isn't functional, OSHA could issue a penalty, and, worse, employees might not be able to safely exit the facility during an emergency.

Organization: Timberline Hardwood Floors, LLC, Fulton, NY.

Business: Hardwood flooring manufacturer.

Agency: OSHA.

Penalty: \$182,917 (proposed).

Reason for fine: An emergency exit sign wasn't adequately illuminated.

Note: Inspectors also said that employees hadn't been trained on the general principles of fire extinguisher use, and that workers operated forklift trucks even though they hadn't been trained and evaluated.



focus: job safety analysis

Take a proactive approach to reduce hazard exposures

As the manager primarily responsible for worker safety, you know it's important to adopt a proactive approach to protecting people. And one of the most proactive things you can do is to conduct a job safety analysis (JSA) for certain tasks.

Not only does the JSA help identify previously undetected hazards, but it also raises awareness of safety and can improve communication between workers and supervisors.

The first step is to select the jobs for which a JSA should be developed.

While it's preferable to conduct a JSA for all tasks, priority should be given to those that have the potential to cause a high number of injuries, are done infrequently, are new, or have been recently modified.

What's being done

Next, break down the job into steps. Examine what's being done rather than how it's being done. Generally, most tasks can be divided into fewer than 10 steps. Keep the steps in their correct sequence because any step handled

out of order could create an additional hazard. When creating your list of steps, observe the job being performed as it normally would be.

After you've identified the steps for the task, identify any potential hazards created during specific steps.

Finally, determine how to eliminate or control the hazards you've identified. In order of priority, you want to

- eliminate the hazard
- contain the hazard
- revise procedures
- reduce exposures

You Make The Call: The Decision

(See case on page 2.)

No. The company lost. An administrative law judge upheld the citation.

The judge said the employer failed to provide workers with appropriate foot protection as required.

The manager's argument that the staffer needed to exercise common sense and not wear cowboy boots fell on deaf ears. Reason: The employer couldn't pass the buck to the victim.

The regulation requires the provision of appropriate foot protection when people could be exposed to hazards. The company either had to provide the appropriate gear itself or make sure workers wore the right foot protection.

The judge also noted that there'd been several near misses prior to the worker's injury, meaning the employer should've known about the slippery floor.

What it means: Take the bull by the horns

It's usually a dangerous game to rely on workers to unilaterally implement the steps needed to safeguard themselves from hazards. They won't always do what needs to be done.

That's why you have to take the bull by the horns and make sure workers wear appropriate safety gear.

In this case, the employer needed to develop a foot protection policy that spelled out exactly what shoes workers needed to wear during potentially hazardous tasks, and then either provide the shoes to the staffers or make sure they wore the right gear.

Based on *CalOSHA v. Bulkeley & Associates, LLC*.



federal regulatory notices

POLICY

Advisory committees on the chopping block

Keep a wary eye on OSHA's efforts to eliminate advisory committees.

Consider a recent letter to Public Citizen and other advocacy groups from Loren Sweatt, acting OSHA administrator, that said OSHA's Whistle-blower Protection Advisory Committee is being replaced with targeted stakeholder meetings.

The letter also noted that a recent executive order eliminated the Federal Advisory Committee on Occupational Safety and Health.

Note: Three other OSHA

advisory committees still exist, but their roles have been significantly reduced.

AUDITS

New scrutiny of OSHA's whistle-blower program

Take note: OSHA's whistle-blower protection program is about to go under the microscope.

In a recent letter, the Office of the Inspector General (OIG) of the U.S. Department of Labor notified Loren Sweatt, acting OSHA administrator, that OIG is initiating an audit of the whistle-blower protection program in OSHA Region 9, which covers Arizona, California, Hawaii and Nevada.

REG ROUNDUP

Beryllium rule; chicken line speeds; handbook

- OSHA has announced that the agency is delaying until Dec. 12, 2018, enforcement of certain requirements of its beryllium regulation.
- Worker advocacy groups have sent a letter asking the U.S. Department of Agriculture to reject a request from chicken processing companies to increase their line speeds.
- You can access the newly released "Chemical, Biological, Radiological and Nuclear Respiratory Protection Handbook" at <https://doi.org/10.26616/NIOSH PUB2018166>.