News & Training
Safety Alert
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December 2022

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Investigations reveal training saves workers' lives, companies millions of dollars

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News Briefs

Safety Stories You Might Have Missed

Contractor gets 3 months in prison, $50K fine after attempting to bribe OSHA inspector

November 2, 2022

Tony Ren, a contractor who was running a construction site on Philadelphia's Arch Street project, was convicted Dec. 21, 2021, for attempting to bribe the OSHA inspector to keep multiple safety violations under wraps and eliminate previous violations and fines.

Ren attempted to bribe the inspector on two separate occasions in November 2017, offering $1,500 in cash in exchange for falsifying inspection results, deleting previous violations from OSHA's database and agreeing not to report the new violations.

Read more

Research shows 2 inhalation injuries for every 10,000 workers in U.S. from 2014 to 2017

November 3, 2022

There were approximately two non-fatal workplace inhalation injuries per 10,000 workers treated in U.S. emergency departments from 2014 through 2017, according to a new research report.

Twenty years ago, a NIOSH study found a higher rate of workplace inhalation injuries in U.S. emergency departments than in medical reports from Canada and the United Kingdom. The more recent study shows a decline in those earlier numbers and that this decline was inconsistent between sexes.

The decrease in these incidents could be due to improvements in interventions or workers receiving medical treatment outside of emergency departments, but further research is needed to know for sure.

Read more

Oil, gas extraction workers more likely for risky driving due to long shifts, commutes, fatigue

November 3, 2022

Oil and gas extraction workers are more likely to encounter risky driving events due to long shifts, lengthy commutes and fatigue, according to research by the National Institute for Occupational Safety and Health (NIOSH).

Compared to all other U.S. workers, oil and gas extraction workers were more likely to die on the job between 2003 and 2013, according to a previous study by the U.S. Centers for Disease Control and Prevention (CDC). In the oil and gas industry, motor vehicle crashes are the leading cause of work-related death.

Researchers concluded these results "underscore the need for employer policies to prevent risky driving events among workers in oil and gas extraction."

Read more

Travelers introduces new app to support mental health of injured employees

November 4, 2022

The Travelers Companies workers' compensation insurer announced a new app that's designed to help injured employees maintain their mental health during recovery.

Travelers' workers' compensation claim data reveals that "more than 40% of employees who have missed work days due to injury have experienced a psychosocial barrier to their recovery."

To help overcome that barrier, the app helps users build mental resilience skills. The app "responds to what users communicate through an anonymous, texting-style platform, and offers strategies including cognitive behavioral techniques, guided meditation and breathing exercises."

Read more

DOL watchdog says OSHA's enforcement efforts failed to protect U.S. workers from COVID-19

November 4, 2022

Did OSHA's enforcement activities help protect U.S. workers from COVID-19 health hazards? A report from the Department of Labor's (DOL) Office of Inspector General (OIG) says it did not.

While the OIG report acknowledged that OSHA was presented with some unique challenges throughout the pandemic, it ultimately reveals that the safety agency didn't sufficiently protect workers from COVID-19.

Read more

Lawsuit against Amazon for unsafe workplace during COVID-19 pandemic can proceed

November 7, 2022

A New York Labor Law claim alleging an unsafe workplace at an Amazon facility during the COVID-19 pandemic can proceed, according to the U.S. Court of Appeals for the Second Circuit.

The appeals court found the Labor Law claim could proceed since OSHA's expertise really wasn't required because state tort law is within the conventional experience of judges.

Read more

Worker who fell from scaffold can't proceed with Labor Law claim

November 8, 2022

A New York appeals court upheld the denial of summary judgment on the Labor Law claim of a worker who fell from a scaffold.

Luis Guaman was working for the New York City Housing Authority while constructing the scaffold. He was tied off to the scaffold when he laid down the first scaffolding plank.

However, Guaman admitted that he unhooked his harness to place the second plank, which is when he fell. He claimed that the safety line he was given to use was of insufficient length to accommodate movement around the scaffold.

Read more

Could OSHA issue a citation for workplace stress? Not yet, but may be coming soon

November 9, 2022

OSHA released a Safety and Health Topics bulletin in early November 2022 addressing workplace stress and mental health hazards, which seems to indicate these hazards fall under the agency's jurisdiction.

The agency doesn't have procedures in place to cover workplace stress in inspections and no standards covering it other than the General Duty Clause. This means OSHA probably isn't equipped to inspect for "hazardous levels of workplace stress" or even hand out a General Duty Clause citation at this point.

Read more

DOL seeks restraining order against sanitation company for endangering teen workers

November 10, 2022

Teen workers were discovered performing hazardous tasks such as cleaning dangerous powered equipment during overnight shifts to fulfill sanitation contracts at JBS USA plants in Grand Island, Nebraska; Worthington, Minnesota; and Turkey Valley Farms in Marshall, Minnesota.

Investigators also found that several of the teen workers – including one 13-year-old – suffered caustic chemical burns and other injuries while working for Packers at the JBS USA plants.

Read more

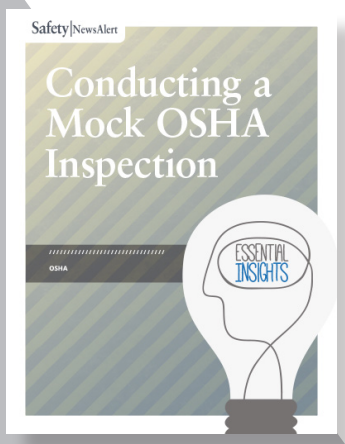
OSHA increases ability to conduct enforcement efforts thanks to 19% growth in inspector roster

November 10, 2022

The number of OSHA inspectors grew 19% in fiscal year 2022, which means the agency has increased its ability to conduct inspections and expand its enforcement efforts.

That means "employers should make sure they are 'inspection ready' and should work with OSHA counsel to ensure that on-site inspections are opened on a lawful basis, then limited and focused."

Read more



Exclusive Safety News Alert Guide

Conducting A Mock OSHA Inspection

Compliance is more important than ever. And being prepared for an inspection is key. But how?

Conduct a mock OSHA inspection.

Top safety pros say this is the best way to get your facility in compliance, prevent hefty fines and prep employees for when a real inspector shows up.

And this Essential Insights shows you exactly how to do it.

get the guide



INADEQUATE PROCEDURE DIDN'T REQUIRE WORKER QUALIFICATION

TRAINING

NTSB: Explosion that killed 2, injured 2 could've been prevented with better safety training


by Merriell Moyer

A 2021 natural gas explosion in Texas that killed two workers and injured two others could've been prevented if employees had received safety training preparing them for abnormal operating conditions.

A National Transportation Safety Board (NTSB) investigation found that the employees' lack of proper safety training contributed to the severity of the explosion.

No form of gas monitoring used

On June 28, 2021, seven workers from Atmos Energy Corporation and Bobcat Contracting, LLC were performing routine maintenance activities on a section of natural gas pipeline near Farmersville, Texas.

The maintenance involved inserting a monitoring device called a pig into the pipeline's launcher, which is a portion of the facility used to insert in-line tools, such as pigs, into the pipeline.

Atmos workers used a portable flaring system to vent natural gas from the launcher. This allowed them to ignite the gas at the flare tip where they could observe the flame and watch gas pressure decrease as the flame died out and eventually extinguished.

The Atmos workers told investigators that they thought the flare system would provide a safe path for any gas leaking past the mainline valve to vent safely if any leakage occurred. They weren't using any form of gas monitoring other than observing the flare tip.

Ignition source unknown

Once the flare system was set up and seemed to indicate it was safe to proceed, the workers performed the remaining steps to load the pig into the launcher with an insertion tool attached to an excavator. However, before the insertion tool was completely removed, the workers heard a loud sound, and one worker observed a flash near the open launcher door. The explosion was directed through the open launcher door, ejecting the pig from the launcher, injuring two of the workers and killing two more.

One of the workers called 9-1-1 and an assistant fire marshal was the first emergency responder on the scene. He determined that two of the workers were deceased and then began assisting the two injured survivors. He also noted there was no sign of a fire.

An investigation conducted by federal and local law enforcement found no evidence that an outside source, such as a lightning strike or criminal activity, ignited the

gas and caused the explosion. NTSB investigators found that the explosion was caused by a leaking mainline valve that allowed natural gas to enter the launcher where it mixed with air, creating a flammable gas–air mixture that was ignited by an undetermined source.

Procedure didn't cover abnormal conditions

Atmos developed a written pigging procedure in 2019, which was still in place when the explosion occurred. This procedure warned that pigging could be dangerous and instructed personnel to:

- monitor for hydrocarbons, such as natural gas
- verify a pressure gauge had been installed to monitor and relieve pressure inside the barrel, and
- never to stand directly in front of the launcher door.

The procedure was intended to serve as a guide for loading a pig under ideal situations and configurations, but the configuration shown in the procedure didn't match the launcher involved in this incident. It also failed to mention use of a flaring system.

Further, the procedure required workers to make adjustments as needed to ensure the pig was loaded in a safe, controlled manner, but abnormal operating conditions specific to pig loading weren't included in any Atmos procedures.

Experience didn't compensate for lack of training

Minimum federal safety standards in 49 CFR Part 192 require operators to ensure through evaluation that employees be qualified to perform covered tasks, such as pig loading. Qualifications include the ability to safely handle abnormal operating conditions, according to the NTSB investigation report. That means Atmos was required to ensure its workers and contractors could recognize and react to the abnormal operating conditions they experienced in this incident, such as the leaking mainline valve.

At the time of the incident, Atmos didn't require employees or contractors to be qualified to load pigs. Instead, the company expected employees to rely on their experience and on-the-job training. However, as the NTSB report notes, "Despite their many years of collective experience, the workers were not qualified as required by federal regulations and were not using gas monitors to monitor for hazardous atmosphere."

Company revised procedure, developed proper training

The company has since:

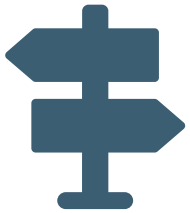
- revised the pigging procedure
- established a new covered task for pigging operations, and
- developed associated training.

Launcher designs were also standardized and made safer and additional specifications for on-site tools and grounding requirements were included to further reduce the risk of inadvertent ignition.

Read this story online

What Would You Do?

What if workers think legalized weed means it's OK to be high at work?



"Does anyone have any questions?" Manager Mike Kelly asked the first shift crew.

The assembled forklift operators, order pickers, maintenance men, machine operators and office clerks either mumbled a hasty "no" or said nothing at all.

It was too early in the morning for much interaction, and Mike knew it, but he still had to give them a chance.

"OK. Have a good day and stay safe out there," he said acknowledging the lack of questions and dismissing the crew to their work.

As the rest of the first shift workers made their way out of the conference room, Mike noticed that Wendy Carlisle, a forklift operator, remained behind. She waited for everyone to leave before getting out of her chair to approach Mike.

"What can I do for you, Wendy?" Mike asked.

'They think they're allowed to be high at work'

"I've got a safety concern that I need to talk to you about," said Wendy. "I think some of the other first shift employees are coming to work high."

"High?" Mike asked. "Does this have something to do with the state making recreational marijuana legal?"

"Yes," Wendy replied. "There are several workers who now think they can get away with being high on marijuana whenever they like."

"It isn't quite like –" Mike began, but Wendy cut him off.

"And if the state says it's OK, what can the company do about it?" Wendy asked.

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

Can't do it at work just because it's legal

Mike should remind Wendy that in many states where marijuana has been legalized employers still maintain the right to enforce drug-free workplace policies.

Just because marijuana is legal, it doesn't mean employees can freely partake of it while they're at work. After all, alcohol is legal and it isn't tolerated in the workplace. Likewise, employees who are drunk while on the job aren't going to be tolerated.

The difficulty with marijuana is that it lingers in a person's system and signs of it could be present even if a person isn't showing any signs of impairment. That's why a lot of states that have legalized marijuana still allow employers to test for it after an accident or if there's reasonable suspicion of impairment.

Even if the federal government legalized marijuana, which could happen, it would be highly unlikely that it would result in employees being able to get high while on the job or report to work while high.

Federal requirements preempt state law

Mike needs to tell Wendy that federal OSHA requires employers to ensure workplaces are free from recognized hazards that could result in injury or death. That means if an employee is in a safety-sensitive position, such as a forklift operator or a truck driver, they may be exempt from the protections offered by a state when it comes to legalized marijuana.

And speaking of truck drivers, the U.S. Department of Transportation (DOT) is a federal agency and it requires employees in a variety of different positions to remain drug- and alcohol-free. In this case, DOT mandates would preempt state law.

5 things employers can do in states where weed is legal

Law firm Bracewell LLP pointed out that in states where marijuana is legal employers are still:

- free to prohibit on-premises and on-duty use, possession and impairment
- able to access training programs to teach management and safety professionals to detect on-the-job impairment from marijuana or other drugs or alcohol
- free to take action against an employee based on unsafe behavior or unacceptable conduct stemming from drug use, and
- typically able to restrict drug use when it comes to safety-sensitive positions.

Read more You Be The Judge in your Membership Dashboard

You Be The Judge

Was 'unpreventable employee misconduct' really sign of a lack of disciplinary action?



Safety Manager Pete Travers hastily scarfed down his lunch. He'd had to deal with a minor chemical spill and had just enough time to clean up and eat a sandwich before heading off to conduct a safety training.

As he took the last bite of his sandwich, his office phone rang. He picked up and the person on the other end was already talking.

"Pete, I need to talk to you right away. OSHA sent us a citation," John Jenkins, the company attorney, said.

"I can't right now," Pete said. "I have a safety training to conduct, then I'll come see you."

"OK, fine," John said. "Just make sure you come see me as soon as you're finished."

Stopped using trench box after pipe was crushed

After the meeting, Pete went straight to John's office.

"OSHA is citing us for a trench violation," John said, avoiding any and all pleasantries, not that Pete expected any.

"If memory serves, that involved Marco Delgado, our drainage and roadway supervisor on a major highway construction project," said Pete. "Marco had been with us for about six months when the OSHA inspector showed up.

"The day before the inspection, Marco's crew was using a trench box in the excavation," Pete continued. "However, the trench box had crushed a section of water pipe and made a big mess, so Marco opted not to use it again."

"Bad choice," said John.

"Exactly," Pete said. "He also failed to keep track of how deep the trench was, so the ladder that was used to get in and out of it didn't extend 3 feet above the surface. That's a violation of OSHA's ladder standard."

'Classic case of unpreventable employee misconduct'

"When the OSHA inspector stopped by, Marco was supervising another employee, Louis Reyes, who was working in the trench with no protection from a cave-in and an unsafe means of egress," Pete explained. "Overall, not a good showing for a new supervisor."

"Was he disciplined for this?" John asked.

"Yes," Pete said. "He and Louis were both written up."

"We should be able to get this citation vacated," John said. "It's a classic case of unpreventable employee misconduct."

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

Decision on next page

You Be The Judge

Was 'unpreventable employee misconduct' really sign of a lack of disciplinary action? (continued)



The decision

No, Pete's company lost when an administrative law judge with the Occupational Safety and Health Review Commission (OSHRC) found that it failed to take adequate steps to discover violations and properly enforce its work rules.

The company claimed the supervisor and worker who violated its trench rules had been disciplined for what it claimed was unpreventable employee misconduct. It also asserted that it had a team of safety managers who regularly visited worksites and looked for violations.

OSHA argued the company's work rules weren't adequately communicated, that it failed to properly supervise its employees and that it didn't always discipline employees for violations.

The judge found the evidence showed the company effectively communicated its work rules to its employees through meetings, training, and a safety manual. However, there was also evidence the company's safety managers weren't able to visit its many worksites as often as they may have liked.

Little evidence of disciplinary action

As for discipline, the only two documents submitted as evidence of disciplinary action were the write-ups for the supervisor and employee involved in this incident. The judge pointed out that the OSHRC had previously stated "post-inspection discipline alone is not necessarily determinative of the adequacy of an employer's enforcement efforts."

In short, the judge wanted to see more documentation of prior disciplinary action. The fact that the company provided only documentation of the post-inspection discipline made it seem as though the discipline only occurred so there would be evidence of it in court.

Analysis: Document, document, then document some more

Safety professionals know documentation is important. Without it there's no proof that workers are trained to do their jobs safely or disciplined for those moments when they disobey safety rules.

Obviously, documenting training and disciplinary action isn't just meant as a legal defense, as it's also an important source of information. Safety professionals can look at training documents to get information on who's been trained and when they may need a refresher. They can also look at disciplinary documentation to determine things like:

- if there are any trends among employees ignoring certain hazards
- whether an employee has been regularly ignoring safety rules, and
- if there's a pattern that may indicate the existence of an unclear rule or procedure.

Cite: *Secretary of Labor v. J.D. Abrams*, Occupational Safety and Health Review Commission, No. 20-0452, 8/29/2022. Dramatized for effect.

Read more You Be The Judge in your Membership Dashboard

TRAINING

Report: Proper training may have prevented $1.8M in damages from ship's engine fire



by Merriell Moyer



An engine fire on a towing vessel was made worse when the ship's crew failed to successfully activate the fixed fire-extinguishing system due to a lack of training.

There were no injuries, but the vessel suffered $1.8 million in damages, the National Transportation Safety Board (NTSB) stated in an Oct. 13, 2022, investigation report.

2 crew members used 8 portable fire extinguishers

The towing vessel *Captain Kirby Dupuis* was pushing loaded dry cargo barges on the Ohio River near Belleview, Kentucky, on Nov. 9, 2021, when a fire broke out on its portside engine.

Two crew members initially fought the fire using eight portable fire extinguishers and eventually attempted to activate the ship's fixed fire-extinguishing system.

The *Captain Kirby Dupuis* was outfitted with a manually activated fixed fire-extinguishing system to protect its engine room using a fire-protection fluid that would flood the room and extinguish a fire rapidly by removing heat after discharging through fixed nozzles as a gas.

The fluid was stored in cylinders pressurized by nitrogen. These cylinders were located forward

of the engine room and could be activated manually or remotely. Two remote pull levers were located in the passageway on the main deck. One lever was labelled "cylinder release" and the other was labeled "valve release." Both levers had to be extended into the open position for proper operation of the system.

The system was equipped with a nitrogen-powered siren to alert personnel, pressure switches to shut down ventilation fans and the main engines, and a 60-second time delay to allow for evacuation of the room before the suppression fluid was released.

The two crew members went to the levers to activate the system. They thought both pull levers were pulled properly, but one lever hadn't been fully extended, so the fixed fire-extinguishing system didn't activate. The fire was eventually extinguished by local firefighters.

Pull lever wasn't fully extended

NTSB investigators found the probable cause of the fire was a lube oil tube that vibrated out of a joint due to a missing retaining ring and mounting bracket. This caused pressurized oil to spray out and make contact with the hot exhaust surface and ignite.

When investigators inspected the fixed fire-extinguishing system, they found one valve release remote pull lever was opened correctly, as per the written instructions by each valve. However, the other lever wasn't fully extended so it didn't allow the nitrogen cylinders to activate.

The gauges on the nitrogen and suppression fluid cylinders indicated they were fully charged. Fire suppression technicians inspected and tested the system and determined it would have operated as designed, if the second lever had been fully extended.

40 drills conducted, no training on system

From January 2021 to the date of the fire, there were more than 40 documented drills and safety meetings held for the crew of the *Captain Kirby Dupuis*. These drills and meetings consisted of simulated fires in various locations of the vessel, oil spills, collisions, abandoning the vessel and person overboard retrieval.

The operating company, Florida Marine Transporters, had a safety management system that included vessel safety orientation for new crew members, a training matrix and procedures for responding to fires on board.

None of these drills or procedures included familiarization or training on the fixed fire-extinguishing system. After the NTSB investigation, Florida Marine Transporters began developing a training video on fixed fire-extinguishing systems that will become required training for their crews.

Failure to activate contributed to severity

The NTSB investigation report states that the crew's failure to successfully activate the fixed fire-extinguishing system contributed to the severity of the fire. Upon activation, the system would have put out the fire with a suppression fluid that was meant to evaporate without damaging the engine. This would have greatly reduced the cost of damages.

During interviews, investigators found the two crew members who fought the fire didn't have a confident understanding of how to operate the system, which if activated correctly, would have shut down the engines and ventilation fans before a complete release of both cylinders of suppression fluid into the engine room and may have quickly extinguished the fire.

In-house emergency responders need thorough training

The NTSB said crew members should train for engine room fires and review the extinguishing system instructions. Training drills should ensure that crew members are familiar with fixed fire-extinguishing systems and procedures, including confirming crew evacuation, isolating the protected space, and activating the system.

This NTSB recommendation can be applied broadly to fire emergency procedures in many industries, from warehouses to manufacturing facilities. Employees who act as in-house emergency responders should be thoroughly trained on any firefighting equipment they're expected to use, including portable fire extinguishers and fixed systems. They also need to be confident in firefighting procedures, including how to isolate a fire and how to properly evacuate the building.

This can be achieved through scenario-based training and periodic re-evaluation of the safety program to ensure all procedures and equipment training are adequately covered.

Read this story online

Case Study

Emergency planning: Are you prepared for the Ripple Effect?



Emergencies create a range of different events and outcomes that can stress an organization's systems, workers and supply chains to their limits.

Safety professionals may feel they and their workplaces are prepared for a number of different kinds of emergencies, but what about newer threats such as active shooters and cyber attacks? Or old, familiar types of emergencies, such as hurricanes or wildfires, that have become more severe and frequent?

What makes an emergency now?

When most people think about emergencies they think about fires or natural disasters like hurricanes or earthquakes. However, there are also manmade emergencies that can affect the workplace.

One that springs immediately to mind is the Sept. 11, 2001, terrorist attacks. The more recent school shootings, like the one that saw 19 students and two teachers killed at Robb Elementary School, are also emergencies.

Prepare for natural and manmade disasters

Another type of manmade emergency that doesn't often come to mind is cyber attacks. For example, there was a hospital in Wyoming that was a victim of ransomware which caused the facility to shut down for 18 days. They couldn't take in new patients and had to send existing patients to other hospitals. In the end, it cost the hospital $1.2 million.

Going back to the natural disasters, there are also emerging emergencies in that area with weather events of increasing severity all across the U.S. and things like wildfires – which are actually often manmade – occurring much more frequently in western states.

So even emergencies that safety professionals were familiar with and prepared for in the past are becoming more problematic because of their increasing severity and frequency.

Secondary emergencies

Typically, organizations are prepared for the initial emergency, especially when it comes to the more familiar ones, such as fires, weather events and natural disasters.

However, there are often secondary emergencies that result from the initial emergency that safety professionals and their organizations might not be prepared for. These secondary emergencies are frequently unique to that specific initial emergency and they can take an organization off guard.

Example 1: Wildfires in California

For example, the wildfires in California led to power safety shut-offs to aid in prevention. That resulted in the power being off in certain areas for two or three days at a time. When this first began, local water utilities were having problems getting water to customers because their pumps need power. This meant that they needed to get large generators with very specific connection points that were already pre-wired.

Getting the generators and installing them was the first ripple from the main emergency which was the loss of electricity. The second ripple was fueling the generators. The water utility had a fuel contract, but the generators were located in remote areas that normal fuel trucks couldn't get to.

These ripples occurred within hours of the power being shut off and while the utility was trying to restore water to its customers, so all the ripples had to be addressed immediately.

Example 2: Evacuation logistics

Another ripple that often comes up during emergencies is related

Case Study

Emergency planning: Are you prepared for the Ripple Effect? (continued)

to evacuations. Getting people away from the site of the emergency is something that's often prepared for, but the logistics of how to transport those people and where to house them until the emergency is over can easily be overlooked.

If the number of people involved is small and the amount of time they need to be in shelter is short, it may not be much of a problem.

But if it's a large-scale emergency involving a big organization and a lot of people, this could be a major hurdle to overcome.

Example 3: 2011 Fukushima nuclear disaster

Probably the most extreme kind of example of the ripple effect was the 2011 Fukushima nuclear disaster in Japan. This involved:

- an earthquake that led to a tsunami
- power failure from the earthquake and tsunami
- a nuclear power plant failure at the Fukushima Daiichi Nuclear Power Plant
- displacement of the local population, and
- food contamination and illness from radiation and other sources.

These were all massive ripples stemming from multiple, almost simultaneous, emergency events that had to be dealt with in order to save as many lives as possible.

Train, practice, debrief

The ripple effect can be mitigated with a thorough emergency preparedness plan that's prepared with some forethought and plenty of research.

However, emergency preparedness plans are only good with lots of training and practice runs. They require a lot of practice to make sure everyone knows exactly what to do if an actual emergency happens because when the adrenaline is pumping and there's actual fire and smoke it's easy to forget what to do.

Emergency responders should practice frequently for a variety of different emergency situations. Then when the drill is over, it's equally important to "inspect what you expect" – go over everything and find out if the responders and other employees performed their tasks correctly.

Debriefing after a drill and getting feedback from employees can give safety professionals critical information that can be used to improve an emergency response. Sometimes these drills and debriefings can reveal holes in a plan that may otherwise have gone unnoticed.

And if at all possible, allow emergency services such as the local fire department or hazardous material team conduct drills at your facility too so they're familiar with it in case of a large-scale emergency.

(Adapted from "Emergency Preparedness & Response: The Ripple Effect," a presentation by Leo DeBobes, Terrie Norris, Randy Milliron and Sarah Bogner at the ASSP Safety 2022 Conference + Expo)

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Real Life Safety

The alarms blared: Why didn't staff shut off the oil?

Technology keeps making it easier than ever for facilities to recognize and respond faster to an accidental release of chemicals or an oil spill.

But if employees aren't trained properly on the technology, it's like flushing money down the drain!

Case in point: Last fall, a marine vessel operator accidentally struck an oil pipeline off the coast of California.

Multiple leak detection alarms sounded immediately. Employees for Amplify Energy Corporation heard the alarms and should've shut down the pipeline immediately to minimize the crude spill.

Yet the employees "repeatedly and incorrectly assessed that there was no leak" and delayed a shutdown according to the Department of Justice (DOJ). Twenty-five thousand gallons of oil were released.

$13 million fine a crusher

The DOJ didn't take it easy on Amplify and its subsidiary companies.

Total fine: $13 million.

In addition, the companies must:

- install a new leak detection system
- boost staff training
- visually inspect the pipeline underwater twice per year
- notify regulators of all leak detection alarms, and
- make procedural modifications at a cost of about $250,000.

Read more Real Life Safety in your Membership Dashboard



Safety agency casting a wider **compliance net**

INJURIES

OSHA's proposed injury reporting rule set to cause big changes for smaller companies



by Merriell Moyer

Big changes are just around the corner for smaller companies, with OSHA's proposed final rule to restore and expand upon Obama-era injury reporting requirements currently set to publish in December 2022.

The draft version of the rule would see reporting requirements expand for high-hazard employers with at least 100 employees having to submit injury and illness forms electronically to the agency, down from the current 250 employees.

Employers with 20 to 249 employees who are classified in specific industries with historically high rates of occupational injuries and illnesses won't see any significant changes to how they report.

Casting the compliance net farther

Currently the OSHA Form 300 injury and illness records require employers in hazardous industries, such as construction, with at least 250 employees to submit their information online. Dropping that threshold to 100 employees will cast OSHA's compliance net even farther.

For example, the U.S. Bureau of Labor Statistics reports that about 150,000 construction workers experience a work-related injury per year. Now consider that under the new rule the threshold drop from 250 to 100 would add more than 9,300 construction firms into the agency's new electronic recordkeeping requirement, according to Courtney Malveaux, an attorney with law firm Jackson Lewis.

Why OSHA wants more data from more employers

OSHA says that expanding the reporting mandate will hopefully

provide the agency with more establishment and case-specific data that will help it focus its compliance efforts.

For example, OSHA says that with the additional data it could:

- send hazard-specific educational materials to employers who report high rates of injuries or illnesses related to those hazards
- use the information to identify emerging hazards, support an agency response, and reach out to employers whose workplaces might include those hazards
- focus its Emphasis Program inspections on establishments with specific hazards, such as trench and excavation collapses
- refer employers who report certain types of injuries and illnesses to OSHA's free on-site consultation program, and
- add specific hazards or types of injury or illness to the Site Specific Targeting program, which currently is based on establishments' overall injury and illness rates.

Final rule in time for Christmas 2022?

This reporting rule was introduced in 2016 under the Obama administration, but it was modified by the Trump administration in 2018 to ease concerns that OSHA would use these reports to shame employers by publishing the information on the agency's website. That's what led to the requirement for electronic submission of summary data only.

The Biden administration not only wants to bring the original rule back, it also wants to expand the number of employers it covers, leading to the threshold drop from 250 employees to 100 employees.

Comments on the proposed rule were due by May 25, 2022, but that was extended to June 30, 2022. OSHA's Spring 2022 Regulatory Agenda lists publication of a final rule at some point in December 2022.

Identification, more detailed data required

The final rule would not only expand on the number of employers covered, it would also reinstate requirements to have employers identify themselves on reports and provide more detailed Form 300 injury and illness data.

OSHA states in the proposed rule's *Federal Registry* entry that it "intends to post the data from the proposed annual electronic submission requirement on a public website after identifying and removing information that reasonably identifies individuals directly, such as individuals' names and contact information."

And don't doubt that OSHA is determined to get its injury and illness data as the agency announced in April 2022 that it started an enforcement program targeting employers who failed to submit their Form 300A data. According to Vector Solutions, the process to manually submit your organization's 300A data to OSHA's ITA, or even to prepare a CSV file, can be tedious and time-consuming, causing EHS professionals to evaluate their reporting tools.

One of the companies that has come under fire from OSHA regarding its injury reporting is Amazon. CNBC reported that OSHA inspectors have zeroed in on Amazon's injury and illness recordkeeping, among other things, as part of its joint investigation with the U.S. Attorney's Office for the Southern District of New York into several of the retail giant's warehouses.

Current process to submit injury/illness data

Currently, OSHA begins collecting injury and illness data for the previous calendar year in early January, with the electronic versions of Form 300 due in early March.

Employers have three options to submit the data on OSHA's website:

- enter the data into a webform
- upload a CSV file to process single or multiple facilities at the same time, or
- transmit an API file.

If data is submitted before the deadline, and a new recordable case occurs, edits can be made to the submitted form by:

- logging into the Injury Tracking Application (ITA) and choose View Establishment List
- clicking on the establishment name link of the facility you want to edit
- clicking on Edit 300A Summary
- making your changes and saving them, and
- re-submitting the data.

If, for some reason, an employer misses the deadline, OSHA says the ITA will accept Form 300A data through the end of the calendar year, and the employer must still electronically submit that data if required by the agency.

Read this story online

Test Your Knowledge

Do your people understand lockout/tagout procedures?

Workers need to be trained regularly on lockout/tagout procedures and should know these rules like the back of their hands.

See how well your team knows lockout/tagout (LO/TO) rules by answering *True* or *False* to the following statements.

check answers on the next page

1. **TRUE OR FALSE:** If equipment is powered by a cord or plug, locking and tagging it out isn't necessary.

2. **TRUE OR FALSE:** There are no specific requirements for LO/TO documentation, so use your best judgment on what it should entail.

3. **TRUE OR FALSE:** If an energy-isolating device is capable of being locked out, then the lockout system must be used.

4. **TRUE OR FALSE:** If a group of employees will be working on a machine that's being locked and tagged out, there must be one authorized employee who takes the lead.

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

Test Your Knowledge

Answers from previous page

1 **TRUE:** Provided the employee working on the equipment is the only one with access to the plug, lockout/tagout isn't required. It's always better to be safe than sorry, however, so you may want to enforce rules even in this case.

2 **FALSE:** At a minimum, documents should include a statement on when to use LO/TO; the steps for shutting down, isolating, blocking and securing equipment; rules for placing and removing locks and tags; and instructions on how to test if it's safe to begin work.

3 **TRUE:** If it isn't capable of being locked out, however, a tagout system should be used instead.

4 **TRUE:** This authorized employee must coordinate the employees or groups working on the machine and determine the exposure status of individuals. He also must attach and remove the lock and tag.

Read more Test Your Knowledge in your Membership Dashboard

Who Got Fined & Why

OSHA tipped off about unsafe worksite: Not the first time facility's received a ticket

Manufacturing companies can protect workers and save themselves a fortune in fines by making safety improvements ASAP.

What happened: The Ferrara Candy Company in Chicago was fined for the third time in five years for lockout/tagout deficiencies and other safety violations. Ferrara has other facilities and faces more fines if the same kinds of problems are found.

Result: OSHA received a complaint about the Ferrara plant's working conditions. The agency issued $201,379 in fines for lack of lockout/tagout procedures before allowing workers to clear jams and service equipment. In addition, the company was cited for for not providing access to an eyewash station and for allowing workers to operate powered industrial vehicles while in disrepair. Ferrara manufactures nonchocolate confectionery products.

Read more Who Got Fined & Why in your Membership Dashboard

Real Life Safety

Worker falls from bottom rung of ladder and injures back: Company's dragged into court

Kim Nickels met her Supervisor outside the facility.

"I heard you were looking for me?" she asked. "I was just finishing up with something."

"No problem," Supervisor Wilt Chalmers said. "It's that time of the year again, so I was hoping you could help me out."

He motioned over to a box marked "Holiday decorations."

"Of course, the lights," Kim said. "Are we stringing them up over the door like last year?"

"Yep," Wilt said. "Thanks so much."

"No problem," Kim replied. "It puts me in a festive mood."

"Great," Wilt said. "I'll come out to see them lit when you're done."

Kim retrieved a ladder from the storage area. She propped it up against the face of the building.

She carefully positioned the ladder so it would be at a safe angle. But when she did, its feet rested a foot away from a ditch being dug out front of the building.

I'll just make sure I lock the feet in place, Kim thought.

She climbed to the top of the building 16 feet up and strung the lights along the same hooks they used last year.

As she descended the ladder, though, she forgot how closely she had to place it to the ditch. Instead of stepping onto solid ground, Kim fell backward into the ditch, hurting her back.

Facility tries to get court case dismissed but loses

The fall into the ditch required back surgery. Kim sued the employer, claiming it should've kept the ditch covered.

The company tried to have the case thrown out. It said Kim could've looked for a safer solution such as using a lift.

Result: The judge refused to throw out the case, opening the door to a trial, or most likely, a costly settlement.

Key: Supervisors – not workers – need to determine the safest set-up for a job. In many cases, giving workers free rein to do jobs that aren't part of their normal routine can be an accident waiting to happen.

Based on Tynan v. Jet Blue

Read more Real Life Safety in your Membership Dashboard

Employer says it only hires contractors: Can injured laborer collect workers' compensation?



by Merriell Moyer



An injured worker can collect workers' compensation benefits despite the fact his employer insisted all of its employees were independent contractors.

The West Virginia Supreme Court of Appeals found that since the worker was paid hourly, used tools owned by the employer and received instruction on what jobs to complete from the employer, he was an employee for workers' compensation purposes.

Company exempted from workers' comp insurance

Steven Bailey was a laborer for Green Tek Building Solutions, a West Virginia company owned and operated by Roger Ellis.

In 2013, Ellis had applied for, and received, an exemption from the West Virginia Office of the Insurance Commissioner stating the company didn't need to maintain workers' compensation insurance since it only used subcontractors. This exemption would last until May 28, 2014, or "until circumstances changed."

Bailey was hired by Green Tek in 2015 as a 1099 employee. If he had questions about work assignments or paychecks, he contacted Ellis for information. Ellis paid Bailey with paychecks that read, "subcontractor labor," in the memo line.

On Feb. 13, 2018, a fluorescent light fell from the ceiling and struck Bailey's left forearm while he was working at a jobsite in Pennsylvania. The incident resulted in an open wound with damaged tendons. Bailey filed a workers' compensation claim on Feb. 20, 2018.

Owner says he'll pay medical bills himself

A claims administrator held the claim compensable for an open wound of the left forearm with tendon involvement and granted temporary total disability benefits starting February 13, 2018. Green Tek contested the claim, arguing it was exempt from carrying workers' compensation insurance.

In a deposition, Bailey testified he:

- was employed by Green Tek and its owner, Ellis
- never applied for an independent contractor license
- was paid by the hour
- was required to complete a daily time card
- received instruction from Ellis or Chris McBride, a foreman
- was told where to work by either Ellis or co-workers, and
- used only a few of his own tools, with the majority of tools being provided by Green Tek.

Bailey stated that when he was transported to the hospital, Ellis arrived and told him he didn't have workers' compensation insurance. Instead, Ellis said he'd cover the medical bills himself.

'He occasionally called for jobs'

Ellis testified in a deposition that he:

- was the owner of Green Tek
- worked with the men he hired, 99% of the time
- mostly paid by the hour but sometimes by the job
- had each worker complete a W-9 and provided them with a 1099 each year
- had each worker submit their hours to him
- paid workers by check
- allowed workers to make their own hours and decide their own break times
- had workers bring their own tools but would let them borrow his if needed, and
- didn't prevent workers from taking other jobs.

Ellis stated that he'd informed Bailey before his first job that he had to be a contractor and had him fill out a W-9. He said Bailey didn't work regularly for Green Tek and just occasionally called for jobs.

Contractor confusion at Pennsylvania jobsite

For the Pennsylvania job where Bailey was injured, Ellis stated he was called by Cocca Development who asked him to bring as many workers as he could. There was no written contract between Cocca and Green Tek. Ellis called Bailey, among others, and offered him the job. He said he told Bailey that Cocca would pay for their hotel rooms and that all of them would be considered contractors for that company.

When they arrived, they were given some general instructions on what to do but weren't monitored as they worked. Ellis said they all came and went as they pleased. He stated they all used their own tools but that Bailey forgot a few of his and had to borrow a few from Ellis.

While the workers all filled out their own time sheets for Cocca, Ellis said the company decided to pay Ellis and have him pay the workers he brought with him. This was allegedly because he already had direct deposit set up with Cocca Development, having worked for them before.

Ellis also explained that Green Tek no longer existed since his license was revoked on Nov. 1, 2016. He stated that he'd never provided workers' compensation for people he hired to do jobs. He said it was his understanding that he wasn't required to have workers' compensation insurance for his business.

'Difficult to conclude he was anything other than an employee'

The West Virginia Office of Judges affirmed the claims administrator's decision granting benefits, finding that Bailey was an employee of Green Tek when he was injured. The Office of Judges found that Bailey:

- had no special skills or tools
- was a manual laborer, and
- was paid hourly by Green Tek.

It was difficult to conclude Bailey was anything other than an employee of Green Tek, the Office of Judges stated in its decision. The decision also noted that Ellis employed a part-time office helper who was also labeled as an independent contractor, and that Ellis seemed to have classified everyone who worked for him as independent contractors no matter what position they held.

On appeal with the West Virginia Supreme Court of Appeals, the court agreed with the Office of Judges, finding the evidence supported Bailey was a Green Tek employee despite Ellis' attempt to classify all of his employees as independent contractors.

Read this story online

Training Tips

Use food to drive safety messages home

Common food items from your grocery store or refrigerator at home can help make for an unforgettable safety training session!

Use raw eggs to represent eyeballs and show your employees what can happen when they don't wear goggles.

Melons work perfectly as human tissue when used on machines that can kill.

Raw hot dogs stuck in the fingers of a glove are a great way to show what can happen to hands.

Emergency drills: Make them think on their feet

Want a new twist on emergency evacuation drills?

During your next drill, have volunteers hold signs that say "FIRE" at one or two emergency exits.

Employees will quickly realize that exit is unusable for the drill and be forced to find another way out of the building.

Make sure to discuss the results. Folks who don't know where the next nearest exit is and get themselves to safety may have "died" during the drill. Make sure to review what people learn from the challenge.

Reduce repetitive motion injuries: Worker feedback is a must

Whether you call it ergonomics or musculoskeletal disorder, awkward postures in the workplace are costing companies by the boatload.

So how can you prevent them?

Try this: Ask your workers to think about their processes at work – and tell you which tasks require them to be in awkward positions.

Do your best to find different ways to do the job that will reduce the amount of stress they're putting on their bodies.

If that doesn't work, look into different equipment to help reduce the strain on workers' bodies. Taking a little bit of time to find and solve ergonomic/MSD issues now will pay off down the road.

And since estimates say MSD/ergo injuries cost companies billions annually, it's worth it to catch potential problems now.

Read more Training Tips in your Membership Dashboard

Real Life Safety

Growing risk for facilities that handle oil, chemicals, waste

Distracted drivers and "road rage" are driving up traffic accidents over the past five years – and the trend's putting companies that transport oil, chemicals and wastewater in a bind.

A recent enforcement action against a Massachusetts transportation company is proof positive: Employees may need more reminders to "slow down" and "always be on the lookout for the 'other person.'"

Back-to-back spills a wakeup call

Fuel oil spilled from tanker trucks owned and operated by Goguen Transportation of Gardner, MA that polluted local waters on two separate occasions in late 2021.

On October 13 of last year, a Goguen oil tank trailer truck rolled over while the driver navigated a traffic circle in Revere. The accident released between 3,000 to 5,000 gallons of fuel oil into areas including Rumney Marsh, Diamond Creek and the Pines River.

Then just before Christmas, a Goguen oil tank trailer truck rolled over at an intersection in Athol and spilled approximately 4,500 gallons of fuel oil into waters including Mill Brook and Millers River.

More than $900K to clean up spills

Both spills led to Clean Water Act enforcement. Oil sheens were visible on the water for a few days and oil accumulated on the shorelines of the impacted waters. The Revere spill occurred in an environmental justice area. Rumney Marsh is an important coastal estuary home to a variety of wildlife including water fowl.

Goguen is paying a $35,354 penalty. It's already forked out $570,000 to clean up the first spill and is likely to pay at least $300,000 for the second one.

Natural habitats all around us

Speed and efficiency are important for regulated facilities trying to stay ahead. Just make sure safety isn't a second concern for employees such as truck drivers, warehouse pickers and other employees who fall under the compliance umbrella.

Fact: Just under 6% of the continental U.S. is developed. An oil spill in a suburban or metropolitan area can impact a wetland or critical habitat if serious enough.

Read more Real Life Safety in your Membership Dashboard

Who Got Fined & Why

Equipment labels & process safety inspections fell short

A routine inspection uncovered a slew of chemical safety violations, much to the chagrin of this food processing plant!

What happened: Ventura Coastal in Visalia, California, improperly managed refrigeration equipment containing more than 10,000 pounds of anhydrous ammonia, in violation of Clean Air Act risk management plan (RMP) requirements for preventing releases of dangerous chemicals. Ammonia is a highly hazardous chemical and is typically the most cited chemical in RMP and OSHA Process Safety Management inspections.

Result: Ventura was fined $270,000 for failing to:

- keep up-to-date information on equipment
- label piping and equipment
- describe maintenance and inspection frequencies for equipment and instrumentation
- inspect equipment and correct deficiencies, and
- address internal audit and incident investigation findings in a timely manner.

'Show must go on' – Supervisor directs crew to go back to work without fall protection

In many cases workers choose not to wear safety vests or tie off to an anchor without supervisors knowing about it. That wasn't the case at a construction site OSHA came across.

What happened: An OSHA compliance officer warned a construction site supervisor for KW Framing about workers lacking fall protection. The supervisor responded that, "the show must go on," and directed the unprotected employees to keep setting joists at heights up to 48 feet atop a multi-unit residential building. When the general contractor became aware of the conditions, he ordered the workers to come down.

Result: OSHA cited the framing contractor for one willful violation for lack of fall protection. It also issued serious citations for a lack of guardrails on window openings, misusing ladders and exposing workers to unprotected rebar. Total fine: $77,072.

Note: "KW Framing ignored an OSHA compliance officer's identification of hazards that could result in death, and company officials told the workers to continue while at risk of severe and possibly fatal fall injuries," said an OSHA press release. "Allowing employees to work at dangerous heights without providing fall protection equipment is inexcusable."

Read more Who Got Fined & Why in your Membership Dashboard

about Safety News & Training Alert

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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.

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