

News & Training SafetyAlert

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News Briefs

Safety Stories You Might Have Missed

Can a worker get comp benefits if intoxicated when injured?

May 20, 2022

Can a worker collect workers' compensation benefits if they were intoxicated when the injury occurred? A Texas appeals court said no when it ruled against a worker who had a high blood-alcohol concentration when he was injured at work.

Texas law says that if an employee is intoxicated at the time of injury then they are barred from receiving workers' compensation, so the appeals court upheld a trial court's ruling denying the worker benefits since medical records proved he was intoxicated when he was injured.

[Read more](#)

3 companies fined \$240K after teen workers found operating balers

May 20, 2022

As the summer hiring season creeps ever closer, U.S. businesses will be offering more employment opportunities to teen workers, but employers must keep in mind that, by law, underage employees can't be given hazardous job duties.

Recent violations found by the Department of Labor's (DOL) Wage and Hour Division in Idaho and Oregon illustrate that fact, with more than \$240,000 in fines issued in three investigations in the two states.

[Read more](#)

2 owners, joint employee charged in \$125K comp fraud scheme

May 19, 2022

Two California business owners and an employee with both companies were charged with multiple counts of workers' compensation insurance fraud after an investigation revealed they conspired together to lower insurance premiums.

Troy Williams, owner of Archer Building Company, John Allison, owner of Allison Development, and Nanci Mormon, an employee at both companies, were arraigned May 16 after investigators found they conspired to illegally lower their insurance premiums and defraud the State Compensation Insurance Fund of more than \$125,000.

[Read more](#)

DOJ: SCOTUS shouldn't weigh in on medical marijuana cases

May 18, 2022

The Department of Justice (DOJ) has asked the U.S. Supreme Court to refrain from reviewing a pair of recent decisions made by Minnesota's Supreme Court denying two workers' requests for reimbursement of medical marijuana.

Attorneys for both workers submitted requests asking the U.S. Supreme Court to review the cases and provide guidance for lower courts, but the DOJ says the request should be denied because it could force employers to violate federal law.

[Read more](#)

Owner ordered to pay back \$2M for comp fraud

May 17, 2022

The owner of a California janitorial company was ordered March 9 to pay back more than \$2 million in restitution for committing workers' compensation and tax fraud.

Almirante Perez, doing business as Southern Pacific Janitorial Group, was ordered to pay \$2,407,573 to multiple victims including the state's Employment Development Department, Republic Underwriters, Berkshire Hathaway and Liberty Mutual.

[Read more](#)

Company, 6 managers indicted after fatal explosion

May 17, 2022

A Wisconsin corn mill and six of its managers have been indicted by a federal grand jury for a May 31, 2017, fatal explosion.

Didion Milling and several members of its management face nine criminal counts, including two counts related to willful violations of OSHA standards for grain handling.

[Read more](#) 

Court: Mine gave workers advance notice of federal inspection

May 16, 2022

A Kentucky mine operator illegally warned miners working underground about an impending federal inspection, according to a May 11 decision issued by the U.S. Sixth Circuit Court of Appeals.

On April 20, 2012, KenAmerican Resources, operator of the Paradise No. 9 mine, gave underground miners advance notice that Mine Safety and Health Administration (MSHA) inspectors were about to conduct an investigation, the court held.

[Read more](#) 

NSC: 1M lost to COVID-19, employers must reevaluate policies

May 13, 2022

One million have died from COVID-19 in the U.S., and the National Safety Council says employers should reevaluate workplace COVID-19 policies.

With much of the nation's workforce returning to in-person work, the NSC is urging employers to take responsibility for the physical and psychological safety of workers.

[Read more](#) 

OR OSHA adopts new heat, smoke rules

May 13, 2022

Oregon OSHA has adopted a new heat standard and new rules regarding wildfire smoke that are said to be the most protective in the U.S.

Both rules "are the most protective of their kind in the country and reflect the need to strengthen protections in the workplace while focusing on the needs of Oregon's most vulnerable communities," according to information Oregon OSHA provided to The Statesman Journal.

[Read more](#) 

OSHA: Summer is coming, prepare for heat hazards now

May 12, 2022

Summer is right around the corner and OSHA wants employers to know that workers need protection from heat-related illnesses.

The agency says temperatures are rising now and employers and workers shouldn't ignore the dangers involved with working in hot weather, indoors and out.

[Read more](#) 

Contractor charged for failing to provide workers' comp

May 11, 2022

A New Jersey landscaping contractor was charged with fourth-degree failure to provide workers' compensation coverage for an employee injured on the job.

Richard Hockenberry, owner of Rick Hockenberry Landscaping, was indicted on the fourth-degree charge that resulted in the state's Uninsured Employer's Fund paying out \$194,582 for temporary disability benefits, medical benefits, legal counsel and other fees.

[Read more](#) 

Was enough done to address hazard that caused fatality?



"If the horizontal beams on those racks had been lowered, he'd still be alive," Safety Manager Pete Travers said.

"Take it easy, Pete," said John Jenkins, the company attorney. "I know you're upset, but OSHA is citing us and I need all the details."

"OK," Pete said. "Kyle Seymour was a forklift operator who typically worked in the non-inventory area of our warehouse, which is where we keep all of our corrugate and other in-house supplies.

"The forklift Kyle drove was a standup, 'dock stance' type that didn't have any protective posts around the operator compartment," Pete continued. "Those posts are meant to prevent under-ride incidents, which can happen to even the most seasoned forklift operator. Just one moment of distraction could cause this to happen without proper engineering controls."

"What do you mean by 'under-ride?'" John asked.

"That's when the operator compartment of a standup forklift goes under the horizontal beams of a rack," Pete explained. "We've had that happen in a warehouse before, and the operator was crushed, but he didn't get killed. That's why I recommended lowering the beams.

Lowering beams out of the question

"But our inventory team says that would reduce warehouse capacity, so management nixed that idea," said Pete. "They said our aisles are wider than required for safe operation, and that's enough for them.

"Instead, I've had to focus on training to make our crew aware of the hazard," Pete continued. "But training can only go so far with this sort of thing.

"I've also been trying to get the manufacturer to approve modifications to the forklift to make it safer for our purposes, but so far they're not cooperating," Pete added.

Worker pencil-whipped safety check

"Let's get back on track," John said. "How did the incident happen?"

"Kyle picked up a pallet of corrugate off a top rack and began backing up," Pete said. "Security camera footage showed that he was going a safe speed while he was backing away from the rack.

"Our investigation couldn't come up with a good reason why he backed under the rack the way he did," Pete added.

"Yes, but didn't you say the forklift's computer showed he did his pre-use safety check in under 30 seconds?" John asked.

"Yeah, which definitely isn't enough time to do a thorough check," said Pete.

"So this is a case of unpreventable employee misconduct," John said. "He was clearly rushing through his shift and wasn't paying close enough attention to what he was doing."

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

See decision on next page

Was enough done to address hazard that caused fatality?



The decision

No, the company lost when an administrative law judge with the Occupational Safety and Health Review Commission (OSHRC) found it didn't fully address the under-ride hazard in the warehouse.

Evidence showed that despite having aisles that were wider than those required by the forklift manufacturer, those aisles were still tight. Especially so when considering the corrugate would typically hang off a pallet by up to six inches at either end.

The company's former safety director testified that he'd made recommendations to lower the horizontal bars in the non-inventory area of the warehouse after an under-ride injury occurred in another warehouse.

However, that would have reduced space in the warehouse, so he was

told to focus on other things like training and getting the forklift modified.

The reason the company didn't invest in standup forklifts more suitable for the warehouse environment was because it felt those types of lifts restricted visibility, which made them unsafe.

Training, wider aisles reasonable attempts?

The company claimed that what it had done to address the issue – wider aisles, under-ride training and attempts to modify the forklift – were all reasonable attempts at abating the industry-recognized hazard.

Before the case went to court, management claimed the incident was the employee's fault even

though there wasn't enough evidence to support this claim.

OSHA argued that the company should have either lowered the horizontal beams or purchased forklifts installed with adequate safety measures to prevent under-ride incidents from occurring.

The judge agreed with OSHA, finding that the company was well aware of the hazard, not only because it was recognized by the industry, but also because of a prior under-ride incident at another warehouse that injured a forklift operator.

In the decision, the judge also pointed out that the company didn't take all of the necessary steps to address the hazard, so the citation was affirmed.

Analysis: Looking at hazards from every side

Properly addressing a hazard isn't always an easy task. There's much to consider as it's possible to create a hazard while mitigating another.

For example, the company was concerned that using a different type of forklift would reduce visibility and put operators in a standing position that could lead to more injuries, leading to use of a forklift that was more suited for a dock than a warehouse.

Focusing on that one hazard led to another hazard.

And safety pros know that training, while helpful, isn't always an adequate solution by itself. Sometimes engineering controls are a must to keep

Cite: *Secretary of Labor v. Chewy, Inc.*, Occupational Safety and Health Review Commission, No. 19-0868, 2/22/22. Dramatized for effect.

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

Supervisors key to reducing worker stress



The psychosocial impact of the pandemic on workers has been profound. People are experiencing high levels of stress, burnout and fatigue. Essential workers are stressed about their own and their family's safety.

For others, stress may come from a family member losing their job.

Even people who are working from home are experiencing more stress, perhaps because they don't have an adequate at-home work environment or their kids are attending school at home.

Stress is an occupational hazard that impacts safety, health and wellbeing.

When we're able to reduce stress, we see better safety outcomes.

Psychosocial stressors

The strategy to improve workers' safety, health and wellbeing is to focus on psychosocial stressors.

(The American Psychological Association defines psychosocial stressors as "a life situation that creates an unusual or intense level of stress that may contribute to the development or aggravation of mental disorder, illness or maladaptive disorder.")

To counter psychosocial stressors, employers can develop strategies to reduce demands on and increase support of employees.

Focus on supervisors

The primary approach I have taken is to focus on supervisors.

We can train supervisors to increase social support for workers or help them to understand ways of decreasing demands of increasing employee control through flexibility.

We know this from years of research.

We developed computer-based training programs that can be used in any size organization.

They're one hour, so they don't take a lot of supervisors' time.

The program trains supervisors on what supportive behaviors they should use to reduce stress and improve health and wellbeing of workers.

continued on next page

Case Study

Supervisors key to reducing worker stress (continued)



Injuries decrease, too

We've found this works in a variety of industries: grocery stores, construction, information technology, healthcare and many others.

After we train supervisors, we measure the outcomes with randomized control trials – a rigorous method of determining the effectiveness of training.


The result: We see the downwind effects on employees in terms of engagement with work; health; and improvements in blood pressure, sleep and overall life satisfaction.

When we train the supervisors, we find employees have decreased burnout, fatigue and stress.

And we've also been able to measure reductions in injuries because workers are more present.

Based on a presentation by Leslie Hammer, Co-Director, Oregon Healthy Workforce Center, Portland, OR, at ASSP's September 2021 conference

Note: The Oregon Healthy Workforce Center is one of ten Total Worker Health centers in the U.S. funded by the National Institute for Occupational Safety and Health to provide outreach, education and research to support efforts around TWH. The centers have free resources for employers.

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

LEARNING TO OVERCOME THE OBSTACLES OF VIRTUAL LEARNING



TRAINING

Online safety training: A valuable tool when done right



by Merriell Moyer

One of the many lessons safety pros learned from the COVID-19 pandemic is the value of good online safety training.

The ability to keep essential workers up to date on safety requirements while social distancing or remaining completely remote proved to be an invaluable tool.

Pandemic forces creativity

"On March 11, 2020, we were working in our offices. The next day we went remote because of the coronavirus pandemic," said Noreen Cleary, Chief HR Officer at USG, at the National Safety Council's Virtual Congress 2020One.

The pandemic forced Cleary's company to get creative until they

could figure out how to adapt to the "new normal."

"Our philosophy is that safety isn't something that we have to make time for. It's always included," Cleary said. "And safety training is always present for our company."

USG had been using online training as a supplement to in-person training, but because of the pandemic the company found itself leaning on its online program to meet its safety training needs.

Must meet stringent standards

However, online training alone isn't enough, so USG committed to ensuring its training met the stringent standards called for by its safety program.

So how can safety pros make sure their online training programs are effectively reaching employees?

According to Marilyn Hubner, the managing director for Buildup Research, an Australia-based safety training company, it comes down to three things, which she shared at the American Society of Safety Professionals' 2021 conference.

Focus on learning objectives

The first thing Hubner says to do is focus on learning objectives. Make sure they are:

- clear
- focused, and
- measurable.

If the learning objectives are good, they'll satisfy this general question: At the end of the training, do the participants know the training objective or not?

Safety pros need to know whether or not the trainees understand the training. For example, trainees could be asked to list three risk management principles once the training is over.

Other questions to ask regarding how good the online training's learning principles are include:

- What is the benefit of the training?
- How does this improve safety?
- Is this mandatory training required by OSHA? If it is, be sure to let trainees know why it's mandatory. For example, "This training is mandatory because (number of) people died from this last year."

Activities should be built in

Just because online training doesn't have everyone sitting in the same room together doesn't mean trainees should just be watching a screen.

You want people to be active during training, Hubner says. That helps them to retain what they're learning.

But the same activities shouldn't be used over and over, it's best to mix things up with a blend of games, online polling and on-screen demonstrations.

"Find an item" activities are especially good as they get participants up and moving around. This gets them a quick stretch and the trainer a short break.

Make sure they're engaged

The most important thing for any training, whether it's online or in person, is that trainees are engaged.

As everyone learned during the pandemic, "Zoom fatigue" is real and conducting online training can make a safety pro wonder if attendees are paying attention or not.

Attendees can become distracted during online training, so it's best to think about ways to reduce those distractions ahead of time.

For training sessions that aren't live and that see trainees working at their own pace, design the module so they need to regularly use the mouse or keyboard to do something.

If the training is a live online session, then use the four minute rule, which says you should focus on one thing for no more than four minutes.

Hubner said combining these two types of training, synchronous live training with asynchronous recorded training, also gets better engagement from attendees.

This is called blended learning, something colleges have been doing for awhile, she said.

It also helps to start strong, so trainees know right away what the learning objective is, and end strong,

to help them retain what they've learned.

And the finish should have a call-to-action: What do you want them to do after the training has ended?

What to avoid

There's good and bad in most everything, and online safety training is no different.

So what does bad safety training look like? According to Hubner, there are five things that can make online training less effective.

Too complex

Sometimes online training gets too deep into the weeds for its own good.

"With the technology we now have, we try to take a complex topic and turn it into online training, expecting people to pick up on the subject matter," Hubner said. "People have trouble picking things up from just listening and reading."

To repeat, or not to repeat?

Repetition helps retention, but when concepts are repeated online it seems like the same things are being covered endlessly, so the audience checks out.

If you don't repeat enough, though, attendees may have a more difficult time remembering, so trainers have to walk a fine line.

It's too long

Some online training can last for hours. Even if it's live, hours of looking at a screen is too long.

Regular work involves occasional distraction. That's normal. But in training, the expectation is for attendees to be "in it" the whole time. That can also be problematic for the trainer who may have a hard time keeping engagement levels that high without everyone being in the same room.

A good method to help mitigate this sort of training fatigue is "microlearning," which is a short learning activity, according to Vector Solutions, a company that specializes in safety training.

Microlearning sessions:

- are usually no more than five minutes in length

- can be mixed in to help break up longer sessions
- can be used with spaced practice, which involves giving learners time to begin to forget training before reinforcing it, and
- act as performance support while on the job.

Not thinking about the audience

You have to think about your audience when developing online training.

They might have distractions, or maybe they're lacking in technological prowess.

So try to keep in mind that if you're asking trainees to share their screen

on a Zoom call, for example, not everyone may know how.

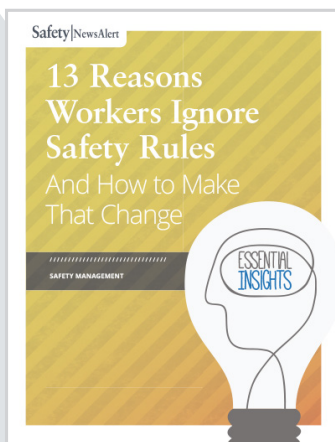
Not considering audience experience

When training is conducted with everyone in a room together, it's possible for the trainer to gauge whether or not attendees know some of the material.

Then the trainer can ask some preliminary questions, and skip some material if the attendees already know it.

But some online training crams all of the information into one module with no consideration for the audience's previous experience, which results in a lot of wasted time for the attendees and the trainer.

[Read this story online](#) 



Exclusive Safety News & Training Alert Guide

13 Reasons Workers Ignore Safety Rules And How To Make That Change

Stop workers from ignoring safety rules before an accident or injury occurs

In this Essential Insights you'll find the 13 leading reasons workers blow off safety - and how to stop workers from deviating from good safety practices and taking unnecessary risks.

[get the guide](#) 



Trench claims worker's life: Why didn't crew wait for safety devices?

"I just got off the phone with the supplier," said Supervisor Darren Romanski. "There's some delay or another on their end."

"Obviously," Bill Potter sneered. "Otherwise I'd already be in that trench digging out that pipe."

"Trust me, I know. I'm frustrated, too," said Darren. "But they promised they'd get us the trench box and ladder by 1 PM."

"This job needs to be done today," Bill said. "So why don't I just do the parts that don't require any digging until the trench box arrives?"

"Like what?" Darren asked.

"Stuff like soil samples, some measurements," Bill said. "If I get a jump on those, we might actually get this project done before dinner time."

"I don't like you doing any work in there without a trench box," said Darren.

"This soil's basically solid as rock," said Bill. "It'll be fine."

"OK. But no digging," Darren said.

"Wouldn't dream of it," Bill replied.

Trench never should've been entered

The events of that day will be firmly set in Darren's mind for the rest of his life: Bill entered the trench to do some last minute prep work. True to his word, he didn't take a shovel in.

But in the blink of an eye, the trench walls rumbled, then collapsed.

Darren could see his worker fighting for his last breaths until he was crushed under tons of dirt. OSHA investigated the scene.

Result: The company was hit with \$157K in fines for failing to provide cave-in protection to workers in an unprotected trench more than 5 feet deep and to provide a means of egress from a trench among other violations.

Based on a fatality at Witt Plumbing.

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

What Would You Do?

What can safety do to prevent work-at-home injuries?



"Hello," Manager Mike Kelly said, picking up the phone.

Mike was in his office, working on the safety budget to present to corporate. He'd been hoping to have no distractions.

"Hey Mike, have you had a chance to look over the workers' comp claims we've been getting recently?" company attorney Carl Crantz asked.

"No, I haven't," Mike replied. "But I can tell you we've had a couple, judging from the incident reports I've seen."

"There's more than a couple," Carl said. "I've seen about a dozen claims."

"A dozen!" Mike said, his voice and his stress level rising. "How could there be that many incidents that I've missed?"

Mostly musculoskeletal problems

"I don't know," said Carl. "You're usually on top of this stuff. I can tell you most of the claims I'm looking at are for musculoskeletal disorders."

"MSDs," Mike said, an idea beginning to form. "Can you give me the names?"

Carl read off the list of names. All but two were office staff who worked from home after doing so throughout the COVID-19 pandemic. Mike related this information to Carl.

"And the two who aren't work-from-home employees are the ones I had incident reports for and can confirm they did have incidents at work," Mike added.

"What are you going to do about the work-from-home injuries?" Carl asked. "I guess you could have them fill out incident reports now, but I'm sure we can't just let these incidents happen."

"You're right about that," Mike said. "Let me think about it."

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

Bring 'em back to the office

Work-at-home employees don't always have the most ideal workspaces, which can lead to neck and back problems along

with other issues such as carpal tunnel syndrome.

So the obvious solution here is to bring those employees back to the office to ensure they're working at proper desks with at least some thought given to ergonomics.

If they don't want to come back to the office full time, a hybrid arrangement could be reached, but the idea would be to have them in the office more often than not, so their ergonomics needs can be met.

Evaluate home offices

Instead of bringing work-at-home employees back to the office to ensure they're using workspaces with good ergonomic set ups, an alternative could be to evaluate their home offices.

A safety pro could visit the employee's home and evaluate their workspace to make sure it conforms to the same ergonomics standards found on the jobsite.

If those standards aren't met, the safety pro could give advice on how to make corrections. Depending on the company's stance on work-at-

Continued on next page

What Would You Do?



What can safety do to prevent work-at-home injuries? (continued)

home situations, office furniture could even be provided to help ensure good ergonomics standards are achieved.

Ensure they fill out incident reports

Whether work-at-home employees work from their homes all the time or for only a few days per week, if they're injured while working they need to report it.

Why? Nicole Hunter, an attorney with law firm Graydon Head & Ritchey, says, "Just as work can be done anywhere, workplace injuries can also now occur just about anywhere. This places employers in an unexpected situation when a workplace injury occurs in a location outside of their control."

Hunter, who was writing specifically about workers' compensation in Ohio, said the state's comp system is a no-fault system which states, "An injured employee may be eligible for workers' compensation benefits if he or she is injured in the course of and arising out of the employment."


That's if a causal connection exists between the injury and the employment. That means if a work-at-home employee gets carpal tunnel syndrome and that condition can be tied to their employment, they'll likely be eligible for workers' compensation benefits.

Where does reporting tie in? Hunter said employers should carefully evaluate any alleged remote work injury before approving workers' compensation benefits. If the work-at-home employee reports an injury first, just as they would

if they were at the jobsite, then the employer will be able to evaluate the incident promptly.

"Employers should also gather as much information as possible from the employee regarding the nature of the work that was being done at the time of the injury and the environment where the injury occurred," Hunter said.

Keep in mind that remote work injuries could also come with recording and reporting requirements for OSHA, and that reporting won't happen in a timely manner if the employer isn't aware of it until a comp claim is filed.

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

SAFETY CULTURE

Choosing Safety would've prevented injury, lawsuit



by Merriell Moyer



OWNER WAS IN A HURRY, FAILED TO USE TRENCH BOX

The owner of an excavation company can't be sued by his employee over injuries sustained in a trench collapse. Why? Because, despite failing to use a trench box, the court found he didn't intend to harm the employee.

Workers' compensation and other laws are in place to protect employers from lawsuits and keep the courts from getting overwhelmed with personal injury claims.

The Missouri Court of Appeals found that such laws applied in this case.

The owner's failure to use a trench box – even though he knew he should have – wasn't justification enough to allow the suit to proceed.

While the law offered the owner protection, he could've avoided the situation entirely if he'd just used the trench box.

OSHA compliance required

Charles Bestgen was an employee with Gene Haile Excavating Inc., a Missouri-based contractor owned and operated by Gene Haile.

The company is a small family business with Haile and his wife as its sole shareholders.

Haile is the president and director of the company, and he often performed physical labor on worksites along with his five or six employees.

In November 2013, Haile's company was hired by the City of Fulton to install sewer mains.

The contract required Haile to comply with OSHA regulations regarding trenches, including the use of trench boxes. Haile was aware of these regulations and the risk

of trench collapses based on his training and experience.

Warned to slow down

As Haile, Bestgen and the other employees began to dig trenches for the sewer mains, they managed to damage nearby, existing sewer lines.

Gerald Noland, an inspector for the city, warned Haile that his employees were moving too fast and needed to slow down around the utilities.

He also told Haile his trenches were getting deep and suggested shoring and use of trench boxes, but Haile responded that doing those things would only slow the project down.

Couldn't exit trench in time

On Nov. 25, 2013, Bestgen was working in a trench that was about 12 feet deep and 3 feet wide.

Haile had been in the trench earlier in the day to test the soil. He chose not to install a trench box despite knowing one was required based on his analysis of the soil.

At one point, Bestgen was instructed by Haile to enter the trench and place a bucket over the end of a pipe

to protect it from a track hoe that was digging nearby.

Someone yelled, "Cave-in!" but Bestgen wasn't able to get out of the trench in time and he was injured when it collapsed.

Haile later admitted he increased Bestgen's risk of injury by ordering him into an unprotected trench. He also claimed that he didn't intend to injure Bestgen.

OSHA citation, negligence suit

OSHA issued three citations to Haile's company for violating trench regulations, and Haile agreed they were warranted.

Bestgen sued Haile personally for negligence, claiming Haile purposefully and dangerously increased the risk of injury by failing to use trench boxes or other protective systems on the worksite.

Haile requested summary judgment in his favor, arguing he was released from personal liability because he was considered a co-employee, which is a protected status under the state's workers' compensation laws.

A trial court found that Haile didn't act with a purpose to increase

Bestgen's risk of harm or cause his injuries, so it granted Haile's motion for summary judgment in his favor.

On appeal, Bestgen failed to prove Haile, as co-employee, acted with intent to injure him, so the appeals court upheld the lower court decision.

Production was chosen over safety

This is a classic safety vs. production situation.

Either slow down, use the trench box and get the job done safely, or hurry up, throw safety to the winds and move on to the next job as quickly as possible, if nothing goes wrong.

The employer in this case chose the latter, which resulted in an injured worker, OSHA violations and a lawsuit.

The job would've been finished sooner, with no stopping to tend to an injured employee and OSHA inspection, if Haile would've erred on the side of safety and just used the trench box.

[Read this story online](#) 

Forklift safety is an everyday responsibility



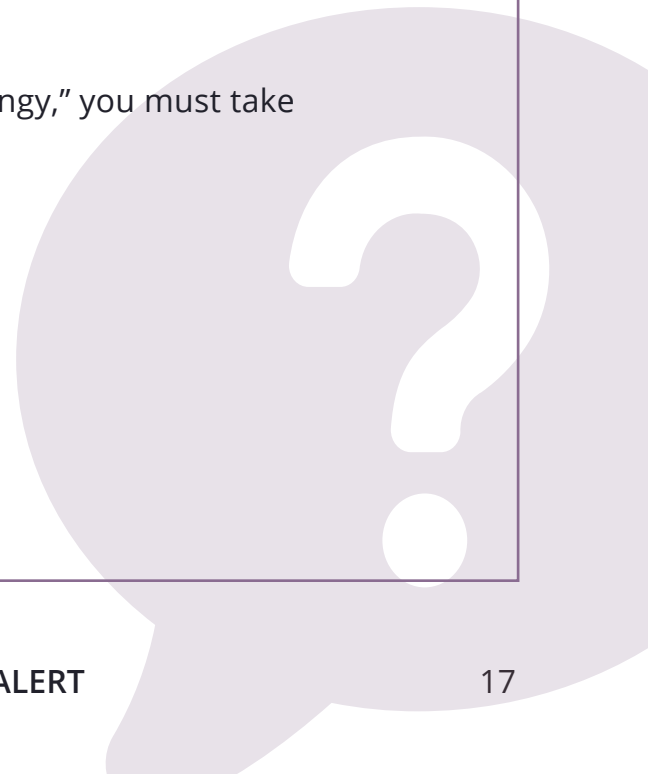
Forklifts are a lot like ladders – they seem deceptively simple to use, but lead to many injuries for workers every year.

So how can you get workers to take forklift safety seriously?

Have them answer True or False to the following questions to keep them on their toes – and safe on forklifts.

- 1 TRUE OR FALSE:** A forklift operator's main concern should be working quickly to load and unload pallets/cargo.
- 2 TRUE OR FALSE:** To lift people using a forklift, the operator must use a pallet to create a platform.
- 3 TRUE OR FALSE:** When forward visibility is obstructed or blocked, you must look around the load.
- 4 TRUE OR FALSE:** If a forklift's brake pedal feels "spongy," you must take it out of service and report it to a Supervisor.

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



Test Your Knowledge

Answers from previous page



- 1 FALSE:** A forklift operator's main concern should be the safety of the forklift being used and the safety of those working nearby.
- 2 FALSE:** It's never acceptable to lift someone on a forklift and pallet. Instead, you must use a platform or scaffold, per OSHA regs.
- 3 FALSE:** If your forward visibility is blocked, it's best to drive in reverse so you have a clear view of your path.
- 4 TRUE:** "Spongy" brakes are a sign something is wrong with the forklift and it needs to be repaired. Leaks in the fuel system and exhaust fumes are also signs the forklift shouldn't be used until it's looked at and repaired.

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



Who Got Fined & Why

Worker's hand crushed in vehicle lift: Employer fined \$1.2 million for a very wide range of hazards!

An auto parts plant in Camden, New Jersey, let all kinds of safety hazards and work habits slide for years. Case in point: A damaged circuit breaker was strapped to a pole with a bungee cord instead of being repaired by a licensed electrician.

What happened: An employee's hand was crushed in an auto lift that started up suddenly. OSHA determined the cause was a lack of lockout/tagout procedures and controls.

My Auto Store was fined \$1.2 million for various safety infractions. Despite issuing multiple repeat, willful and serious citations, OSHA zeroed out fines for nearly a dozen infractions.

The auto parts salvager failed to:

- develop and use lockout/tagout and machine guarding procedures to prevent employees from being hit by the moving conveyor line. OSHA inspectors saw workers walk up to the conveyor line repeatedly as it was moving. No Supervisors stepped in to correct the behavior.
- prohibit the use of sparking tools near gasoline vapors
- remove boxes and other obstacles blocking emergency exits
- protect employees from being caught in auto lifts
- provide PPE
- train workers on using fire extinguishers
- address various electrical, noise, machine guarding, crushing and flammable material hazards, and
- affix guardrails to stairways and open areas of elevated platforms.

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

DRUGS/ALCOHOL

Positive drug tests higher than they've been in decades



by Merriell Moyer

Rates up 30%
compared to
all-time low set
in 2010



Positive drug test results in the workplace reached the highest rate in two decades in 2021, according to Quest Diagnostics' annual Drug Testing Index.

The rate of positive drug test results in the U.S. workforce reached its highest last year since 2001, the report states.

Positive test result rates were up more than 30% in 2021 from an all-time low seen in 2010-2012.

That information is based on more than 11 million urine, hair and oral fluid drug test results collected during calendar year 2021.

The overall positivity rate for the combined U.S. workforce – which includes private, federal and federally regulated workers – was up in 2021 to 4.6% compared to 4.4% in 2020 and up 31.4% from the low of 3.5% of a decade ago. That data is based on nine million samples collected during 2021.

Positivity in the federally mandated, safety-sensitive workforce, which was based on almost 2.7 million urine drug tests, stayed even from 2020 to 2021 at 2.2%

In the general workforce, positivity increased 1.8% to 5.6% in 2021. It was 12% higher than in 2017 and has gone up in each of the last five years.

Rates for post-accident testing higher than for pre-employment

Urine positivity rates for post-accident testing increased at

Positive drug tests higher than they've been in decades

a greater rate than pre-employment testing over the past five years.

That's due to higher positivity on post-accident tests for marijuana, cocaine and semi-synthetic opiates.

In the general workforce, pre-employment positivity increased 17.4% from 2017 to 2021, while post-accident positivity increased 26%.

For federally mandated, safety-sensitive positions, pre-employment positivity increased 9.5% since 2017 compared to post-accident positivity which increased 41.9% in 2021.

"The increase in post-accident positivity is alarming and suggests more drug-associated accidents may be occurring even with employers with pre-employment drug testing in place," said Dr. Barry Sample, Senior Science Consultant for Quest.

"The high cost of work accidents cannot be understated," Sample said. "While employers often think of accidents in terms of wage and productivity losses, medical expenses and administrative expenses, accidents also impact morale, competitiveness and recruiting."

Increases in specific categories for federally regulated workers

There was an increase in positivity rates in specific federally mandated, safety-sensitive testing categories with marijuana seeing an increase of 8.9%, from 0.79% in 2020 to 0.86% in 2021.

Amphetamines also saw an increase from 0.64% in 2020 to 0.69% in 2021, an increase of 7.8%.

Positive test results for cocaine increased as well, up 5% from 0.20% in 2020 to 0.21% in 2021.

Positive marijuana tests up in general workforce

Based on six million urine tests, marijuana continues its upward climb in the general U.S. workforce.

Positive test results for the drug increased 8.3% from 3.6% in 2020 to 3.9% in 2021, the highest positivity rate ever reported in Quest's annual Drug Testing Index.

Over the past five years, positivity for marijuana in the general workforce increased 50% from 2.6% in 2017 to 3.9% in 2021.

Marijuana positivity increased across all industries from 2017 to 2021, with the Accommodation and Food Service industry having the highest positivity rate at 7.5%. That's an increase of 114.3% over the past five years.

Retail had highest positivity rate

The Retail industry had the highest positivity rate in 2021 with a 7% increase compared to 2020 data and an increase of 34.6% since 2017.

Retail also experienced the only year-over-year rise in methamphetamine positivity from 2017 to 2021 of 55.6%, up from 0.09% in 2017 to 0.14% in 2021.

[Read this story online](#) 



FREE REPORT FROM  **Avetta**

Benchmarking Your Contractor's Safety

Compliant Contractor Management for Reduced Costs and Increased Wellbeing

Non-fatal workplace injuries result in almost \$60 billion in workers' compensation costs every year. That's more than \$1 billion out of employer's pockets for what are often avoidable incidents.

Avetta is offering a new whitepaper on the strategies, insights, and tools you need to keep your contracted workers safer.

Download your complimentary white paper to learn more!

[get the white paper](#) 

Ergonomic injuries: What are the warning signs?



Ergonomic injuries can be alleviated, and in some cases, reversed.

The first step? Recognizing the signs of a repetitive motion injury.

Review these warning signs with staff:

- Dull, aching or stabbing pain in one or more fingers, wrists, elbows, neck or other parts of the body
- Tingling or numbness, particularly in the hands or fingers
- Loss of muscle function or weakness
- Discomfort or pain in the shoulders, neck, or upper or lower back
- Extremities turning white or feeling unusually cold
- Clumsiness or loss of coordination
- Range of motion loss, typically in the shoulders
- Discomfort when making certain movements

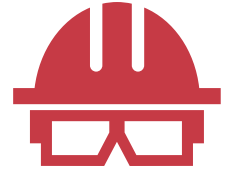
Safety slogans worth passing along to your team

An effective safety slogan is one that makes you think ... or laugh out loud!

Here are a few gems from the U.S. Navy worth posting in your facility or sharing at a toolbox talk:

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

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



He ignored a hunch and followed orders: Now he and company are on trial

"The supplier is here," said Dev, the Supervisor for a construction contractor. "I can hear their truck rumbling outside."

"Right on time," said Wyatt, an employee who frequently hauled heavy equipment to job sites.

"Can you show them where to load the skid steer?" asked Dev.

"You bet," said Wyatt.

"Come find me if you need anything," said Dev. "Go ahead and take off once it's loaded securely."

Wyatt gave the thumb's up and went to meet the suppliers.

It took the crew about 10 minutes to move the skid steer onto the back of Wyatt's trailer. The equipment weighed about 3 tons.

"Whoa! Hey fellas," said Wyatt. "That doesn't look square to me."

"What do you mean?" asked one of the supplier's workers.

"It's not on there straight," said Wyatt. "That sucker is heavy as hell. You've got it loaded about three feet to the left."

"Look man, we've got a lot of pieces to deliver this morning," said the employee. "You can move it if you like."

Employee was worried. What did the Supervisor think?

"How the heck am I supposed to move it?" said Wyatt. "That's your job!"

Dev the Supervisor noticed the discussion and came over. "What's holding things up?" asked Dev.

"The skid steer isn't loaded squarely in the middle," said Wyatt. "I'm worried about it shifting if I have to make a sudden stop or swerve."

"If you drive the speed limit and stay in the right lane, that shouldn't be a problem," said Dev.

The Supervisor took a closer look at the skid steer. "Yeah it's not perfect, but I think she's OK," said Dev. "I wouldn't worry about it. All right?"

Wyatt took a deep breath and thought to himself, *I'm really not all right with this at all!*

But Wyatt figured Dev was the boss, so he'd better follow orders.

"All right," said Wyatt. "I'll take off after they move the truck."



He ignored a hunch and followed orders: Now he and company are on trial (continued)

Worker's worst fears realized out on the highway

Traffic was light as Wyatt navigated the highway. He'd been driving under the speed limit but decided he could safely speed up.

But as he did so, he noticed the skid steer starting to bounce in his rearview mirror.

He pressed on the brakes to decelerate into the roadway's shoulder. The skid steer caused the rear end of the truck to swing out into traffic.

Wyatt felt a jolt of terror as the truck started spinning. He did all he could to keep the vehicle from jackknifing.

The skid steer fell from the trailer. The three-ton load landed on the hood of a car behind Wyatt's truck.

Wyatt brought the truck to a stop and raced to check on the driver. "Are you all right?" he yelled.

The driver didn't answer at first then shook his head slowly. "Need ... an ambulance."

It was a miracle the driver wasn't killed on the spot, and Wyatt knew it.

Company, Supervisor and Employee all sued for negligence!

The injured driver sustained serious injuries and required surgery. He spent a few weeks in the hospital recovering.

His lawsuit alleged negligence against the company, the supervisor and the employee ("Wyatt").

The company acknowledged liability for allowing the truck to be loaded improperly and driven off company property. The employee admitted to compromising safety despite his initial reservations, and testified that he feared losing his job if he didn't follow orders.

Result: A jury awarded punitive damages of \$1 million – a financially crippling sum to the small company.

The company appealed, but the higher court ruled the \$1 million award could stand.

Listen to hunches: That's your conscience talking to you

All it would've taken was about 15 to 20 minutes tops to prevent this accident from occurring.

Remind staffers that if they've got a bad feeling about something, speak up and act.

Chances are that little voice is your life's experience and training talking to you. Not to mention your conscience.

Don't make the same mistakes the supervisor and employee in this case did.

(Based on McQueen v. Green. This case has been dramatized for effect.)

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

HAZARDS

Sleep inertia primary cause in \$2.5M maritime incident



by Merriell Moyer

GROGGINESS BEHIND CAPTAIN'S BAD DECISION MAKING

As a safety pro, you know about the hazards of fatigue, but do you know what sleep inertia is and how it could affect workers for 30 minutes or more after waking?

Sleep inertia is that temporary feeling of grogginess felt immediately upon awakening, according to a National Transportation Safety Board (NTSB) investigative report.

Studies show other effects include reduced alertness, slower reaction time, less accuracy, degraded memory and impaired decision-making ability – all things that have a negative impact on workplace safety.

This state usually lasts for about 30 minutes after waking but could last longer if a person is sleep deprived.

Loaded with 2M gallons of naphtha

Sleep inertia is what the NTSB says caused the captain of the towing vessel *Ava Claire* to strike a closed lock gate in the Gulf Intracoastal Waterway near Intracoastal City, LA, on the morning of March 22, 2021.

There were no injuries, and despite occurring at speeds under 5 mph, the incident resulted in \$2.5 million in damage to the lock gate.

The day of the incident, the 84-foot-long *Ava Claire* was pushing two 298-foot-long by 54-foot-wide steel tank barges loaded with more than 2 million gallons of naphtha, a flammable hydrocarbon mixture.

The vessel was on its way down river to the Valero Port Arthur Refinery in Port Arthur, TX.

No problems were reported with the vessel's steering or propulsion systems as it transited through the first lock it had to pass through on its way down the Gulf Intracoastal Waterway.

Captain didn't get much sleep

The captain went to sleep at about 12:30 a.m. on March 22 after being relieved by the vessel's pilot.

At about 5:15 a.m., the captain woke up and went to the wheelhouse to assume the watch early, just as the vessel was approaching another lock.

Despite company policy forbidding a change of watch during a "critical

Sleep inertia primary cause in \$2.5M maritime incident

move” such as transiting a lock, the captain told the pilot he’d take over.

The pilot offered to take the *Ava Claire* through the lock before turning over the watch, but the captain declined and took the helm about five minutes before maneuvering into the lock.

Radio, GPS failures complicate maneuver

Typically, a deckhand would give distance information regarding a lock to the captain via handheld radio, but the radios weren’t working properly that day, so communication was an issue.

To further complicate matters, a GPS system failed, which denied the captain his primary source of information on the vessel’s speed, so he had to judge speed by watching the lock wall out of his side windows.

As the *Ava Claire* approached the lock gate at 5:22 a.m., the captain misjudged the vessel’s speed and distance, causing it to strike the gate at 1.2 mph.

Despite the slow speed, the *Ava Claire* did an estimated \$2.5 million in damage to the lock gate. Luckily, there were no injuries and none of the containers of naphtha were damaged.

The captain had 31 years of experience operating tow vessels similar to the *Ava Claire*, although he had spent more time operating vessels with slightly more powerful engines.

Groggy state led to poor decisions

According to the NTSB, sleep inertia was the primary cause of this incident.

The incident occurred at 5:22 a.m., less than a half hour after the captain had woken up. He’d only had a little more than four hours of sleep.

As soon as he woke up, he went to the wheelhouse and took the helm just in time to begin maneuvering into the lock. He was likely experiencing the effects of sleep inertia at this time.

The grogginess and inattentiveness caused by sleep inertia combined with the challenges of the operating environment – the loss of GPS systems and communication problems – negatively impacted the captain’s ability to safely navigate the lock.

Those same sleep inertia issues also likely caused his poor decision making in taking the helm despite the company’s policy.

“Mariners should allow time to fully recover from sleep inertia before taking a watch and performing critical duties,” the NTSB report states.

The same could be said for truck drivers or any workers with safety-sensitive duties who may be getting less sleep than usual and have to start working while in sleep inertia’s groggy, inattentive state.

To avoid a similar incident, workers should get a full night’s sleep and have time to completely shake off the effects of sleep inertia before starting to perform tasks that are safety-sensitive in nature.

[Read this story online](#) 

Who Got Fined & Why

OSHA could shut down manufacturer if fire protections aren't enacted

OSHA fined a Florida cabinet maker in 2021 because it lacked a sprinkler system. A follow-up inspection discovered the manufacturer didn't beef up fire safety measures to OSHA's satisfaction.

What happened: Deering Custom Cabinets in Pensacola was first cited for failure to:

- install automatic sprinklers in a paint spray booth
- prevent employees from working with flammable paints and stains near unapproved electrical equipment, and
- fit test and train workers for respirators and ensure proper storage of the PPE.

Result: Deering Custom Cabinets faces \$157,977 in proposed penalties for failure-to-abate violations. OSHA is sure to keep close tabs on the company's progress and can begin the process of a shut-down order if the company fails to comply.

Chemical safety can't be an afterthought! Lives are at stake

Facilities that use and store hazardous chemicals in significant quantities must keep their process safety and risk management plans up to date. Otherwise employees may be caught flat-footed in the event of a pipe leak, equipment malfunction or fire.

What happened: The Par Hawaii oil refinery in Kapolei, Hawaii, was years behind in updating its Clean Air Act Risk Management Plan, and didn't prioritize emergency response and reporting requirements either.

Result: EPA inspectors ticketed the refinery for failure to:

- include accurate piping and machine diagrams in its RMP
- correct mechanical integrity flaws
- update operating procedures in its RMP, and
- notify the state emergency response commission and local emergency planning committee about sulfur dioxide releases above reportable quantity limits in 2014 and 2015, as required by the Emergency Planning and Community Right-To-Know Act.

Total fine: \$176,899.

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

HAZARDS/ MANUFACTURING

What's behind the string of food facilities burning to the ground? FBI warns of trouble to come

 by Scott Ball



Are the fires and accidents at a dozen-plus food processing plants this year just an unfortunate coincidence – or potentially the result of terrorism?

Consider that over the last few weeks, five major food distributors in four states were destroyed by explosions and fires. Accidents at more than 20 food plants and warehouses in the U.S. and Canada were reported in the last four months.

There's no doubt many organizations will be reviewing their risk management and process safety plans to identify any holes, and increase employee training on chemical safety.

Feds warn of cyber attacks

The FBI has now sounded the alarm that more trouble may be on the horizon.

The bureau's cyber division warned the food and agriculture sector that "ransomware actors may be more likely to attack agricultural cooperatives during critical planting and harvest seasons, disrupting operations, causing financial loss and negatively impacting the food supply chain."

Last year, a ransomware attack knocked the Colonial pipeline offline. Colonial paid the attackers millions of dollars in ransom to regain control of its systems.

Environmental Compliance Alert

warned that other industrial sectors besides oil & gas could be the targets of attacks, such as

- drinking water and wastewater treatment facilities
- chemical plants and refineries, and
- food service operations.

A rundown of food facilities destroyed in March and April

Oregon-based Azure Standard announced all of its liquid products will be out of stock after a fire burned down its massive warehouse.

Nearly 90% of Taylor Farms' facility in California was destroyed. 35,000 pounds of anhydrous ammonia leaked as residents sheltered in place.

Shearer's Foods potato chip plant in Oregon was destroyed by a natural gas boiler explosion. Seven employees were seriously injured.

The Maricopa Food Pantry in Arizona lost 50,000 pounds worth of meat and food in a fire that started 15 minutes after the food bank closed. Trailers storing diesel on site fueled the raging inferno.

[Read this story online](#) 



How a bucket landed a facility in legal hot water

When can a \$6.99 plastic bucket cost a company thousands in legal fees?

When an employee uses that bucket as a step ladder ... then gets hurt on the job.

A New York-based employer recently found itself standing on the losing end of an employee claim for this very situation.

Check out the specifics of this case and why a court ruled against the employer.

Supervisor had done the same

The employee here needed to do some electrical work but couldn't find a step stool, despite looking for it for several minutes.

So he did the next best thing: grabbed a five-gallon bucket, flipped it over, then stood on it for the lift he needed.

No surprise here: He fell off the bucket, getting injured.

'Do as you see me do and as you're trained' policy must always be in effect!

You probably think to yourself "Of course he did – a bucket isn't a replacement for a ladder – everyone knows that's a bad idea."

But another person who didn't appear to know that? This worker's supervisor, who had apparently done the same thing recently in front of his team. And on more than one occasion!

When the employee brought a labor law violation complaint against the employer, the company tried to get the case dismissed.

No luck. The case made it all the way to the state supreme court where it ruled the company had enough potential responsibility that the case should be heard by a jury.

Even though the company had a safety policy that specifically addressed ladder use, the supervisor's prior use of a bucket as a step stool sunk its case.

Now the company can either roll the dice at trial or settle out of court, neither of which will be cheap.

Lesson learned: Using this case as a conversation starter, you want to make sure there isn't a "do as I say, not as I do" culture when it comes to safety.

Actions carry more weight – and more costs – than words.

And as this case shows, bad habits can be very bad for your company's bottom line.

Cite: *Portillo v. DRMBRE-85 Fee LLC*, NY Court of Appeals, No. 152890/17, 2/25/21.

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

about ^{News & Training} SafetyAlert

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

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

But we don't stop there.

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

Meet Our Editors



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