News & Training
Safety Alert
Powered by SuccessFuel
June 2023

Amazon, Norfolk Southern, Tesla make 2023 Dirty Dozen List 13

The end of the COVID-19 national emergency is near: 7 things employers need to know..... 20

3 business reasons employers need to reduce worker injuries 25

Several corporate giants make the 2023 Dirty Dozen List of unsafe employers



News & Training
Safety Alert
Powered by SuccessFuel
June 2023

In This Month's Issue

News Briefs 3

Insider Content

You Be the Judge
Can company avoid citation if it began forklift training program after incident occurred? 11

Safety Case Study
Want safer employees and fewer injuries? Get supervisors on your side 17

What Would You Do?
Were they really safe if they weren't using their fall PPE correctly? 18

Who Got Fined and Why
3 injuries in 5 months is a sign of a broken safety culture: OSHA takes action 23

Who Got Fined and Why
'Is this waste hazardous?' No one at facility asked – now it's paying a fine 23

Real Life Safety
Electrician falls while using another company's ladder: Who's liable for the injuries? 24

Training Tips
Preventing hand injuries: Training ideas that work 28

Articles


Amazon, Norfolk Southern, Tesla make 2023 Dirty Dozen List 13


The end of the COVID-19 national emergency is near: 7 things employers need to know 20


3 business reasons employers need to reduce worker injuries 25


Report identifies 5 safety issues that led to 2020 Bio-Lab fire, toxic gas release 29

Copyright © 2023 *SuccessFuel*

News Briefs

Safety Stories You Might Have Missed

Feds reaching out to Southeast employers, parents in effort to protect teen workers

The U.S. Department of Labor (DOL) is reaching out to employers, teens and parents in the Southeast in an effort to protect teen workers as the summer hiring surge approaches.

Southeast employers were assessed more than $2.8 million in penalties from federal child labor law violations from 2020 to 2022, according to the DOL. Further, child labor law violations have risen 68% since 2018.

From fiscal year 2020 through 2022, the DOL Wage and Hour Division conducted more than 500 child labor investigations affecting nearly 2,900 minors in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee.

While many of the violations involved the amount of hours teen workers are allowed to work, some are directly related to safety.

These violations were "most commonly found in the restaurant, retail, construction and amusement industries, but recent violations in the Southeast auto manufacturing and meat processing industries are alarming."

"Unfortunately, we sometimes learn that an employer violated the law only after a child suffers an injury," said Wage and Hour Division Regional Administrator Juan Coria. "Failing to comply with the laws that protect minors' safety is irresponsible and illegal."

For more information about federal child labor laws contact the Wage and Hour Division by phone at 866-4US-WAGE (487-9243) or visit its YouthRules! website.

Read the story online

Report based on federal injury data finds Amazon warehouses are still unsafe

A report issued by a union coalition found that Amazon warehouses are still a more dangerous place to work than similar facilities based on recent U.S. Bureau of Labor Statistics (BLS) data.

The report from the Strategic Organizing Center (SOC) states that there were 6.6 serious injuries for every 100 Amazon workers in 2022, according to injury and illness data submitted by Amazon to OSHA.

Amazon had a rate of 5.9 serious injuries for every 100 workers in 2020. That rate shot up to 6.8 serious injuries for every 100 workers in 2021, then dropped by about 3% between 2021 and 2022. The company attributed the 2021 jump in injuries to a warehouse hiring push that occurred in response to the COVID-19 pandemic.

While the company's serious injury rate fell between 2021 and 2022, the amount of overall injuries at its U.S. facilities increased to 39,000 total injuries, up from 38,300 in 2021.

In 2022, Amazon warehouses were responsible for more than half of all serious injuries in the warehousing industry. Amazon warehouses employ 36% of the industry's workers, according to the report.

Amazon responded, saying the report's findings "paint an inaccurate picture," CNBC states.

The company "also disputed the SOC's use of the term 'serious injury rate,' saying it's not a regulatory metric." That term could "capture any injury that could lead to an employee taking time away from work, or spending time working in another role, including what (Amazon) considers to be minor injuries, such as a strain that might require a worker to avoid lifting heavy boxes."

Several Amazon warehouses were the target of federal investigations over various safety violations in 2022, with OSHA citing six of its warehouses for ergonomics hazards and injury reporting failures. Those citations followed ongoing inspections by the U.S. Attorney's Office for the Southern District of New York at several locations.

Read the story online

City officials: Ongoing fire at unsafe recycling plant is irresponsible owner's fault

The owner of a Richmond, Indiana plastics recycling plant is at fault for a massive ongoing fire and toxic smoke that's polluting the area, according to city officials.

Seth Smith, the plant's owner, was ordered by Richmond officials to repair or demolish and vacate the unsafe plant in 2019, CNN states. At least one building on the property didn't have a fire extinguishing system.

The fire started April 11 in a trailer that was loaded with plastics, which then spread to surrounding piles of recyclables before reaching a building that was packed full "from floor to ceiling and from wall to wall" with more recyclable materials.

Firefighters who arrived to fight the blaze had difficulty reaching the buildings because the facility's access roads were blocked by piles of plastic.

No workers were injured in the fire, and all were accounted for after emergency responders arrived at the scene.

The cause of the fire is currently unknown, but city leaders were concerned over fire hazards and building code violations at the plant since at least 2019.

"We knew it wasn't a matter of if, it was a matter of when this was going to happen," Richmond Fire Department Chief Tim Brown told CNN.

The fire is expected to continue for several more days while spewing potentially toxic smoke and ash into the air.

Air monitoring is being conducted around the clock by the U.S. Environmental Protection Agency due to concerns regarding contamination from asbestos and toxic chemicals that are released from burning plastic.

Because of the potentially toxic air, an evacuation order remains in effect for the 2,000 residents who live within a half-mile radius of the plant. Those who live downwind of the evacuation zone were urged to shelter in place and avoid smoke exposure. Schools in the area have also been closed.

Read the story online

McDonald's franchise ordered to reinstate 4 employees fired over COVID-19 concerns

Four employees of a McDonald's franchise who were fired after reporting COVID-19 concerns have been reinstated to their jobs. They will receive more than $113,000 in lost wages and interest.

The California Labor Commissioner ordered the franchisee to reinstate the workers and pay them $113,241 in lost wages, interest and retaliation penalties.

R&B Sanchez, the McDonald's franchisee, were repeatedly notified by the four employees in April 2020 that they had concerns about the restaurant's COVID-19 protocols. Specifically, they were concerned about being asked to re-use masks and gloves and not being notified about positive COVID-19 cases.

"This employer responded by firing the workers for exercising their rights," said Labor Commissioner Lilia García-Brower.

The four workers filed retaliation complaints in September 2020 after they were fired. The Labor Commissioner's office cited R&B Sanchez in February 2021, which led to a "lengthy appeals process." A hearing officer upheld the citations in February 2023.

As part of the reinstatement, McDonald's must remove any negative references from the four workers' personnel files and post information on the citations and violations in the workplace.

The citations were jointly applied to R&B Sanchez's successor, DRS Hospitality LLC, owners Robert and Beverly Sanchez, and the franchisee human resources officer, Brian Sanchez.

Read the story online

Owners, supervisors of landscaping company charged with workers' compensation fraud

Three owners and two supervisors of a San Diego landscaping company were charged with multiple felony counts of workers' compensation fraud.

The scheme involved underreporting employee payroll by an undisclosed amount to the company's insurance provider, according to the California Department of Insurance.

Antonio Resendiz, Ismael Resendiz and Jorge Martinez, the owners of Green View Landscape & Tree Service Inc., were arraigned April 11. Ariana Martinez and Silvia Martinez, supervisors for Green View, were arraigned the same day.

The California Department of Insurance didn't "include specific allegations against each defendant, but stated that providing false payroll reports to insurance companies is a common tactic used by employers attempting to avoid paying required insurance premiums," the Times of San Diego reports.

Read the story online

Company assisting feds in Ohio train derailment investigation kicked for releasing info

A manufacturer that was assisting the National Transportation Safety Board (NTSB) in the investigation of a train derailment was kicked from the inspection after releasing unconfirmed information.

National Steel Car was assisting NTSB investigators at the Norfolk Southern Railway train derailment near Springfield, Ohio. The NTSB said the company released information that hadn't been "fully vetted or confirmed by the NTSB."

The company issued a press release on April 14 that states, "We are very pleased indeed that the cancellation of AAR EI-0033 completely exonerates National, in all respects, regarding this derailment."

This refers to an investigation into the steel coil wheelsets the company manufactures and that were used on the train involved in the March 4 derailment.

However, in a letter NTSB issued to the company Investigator James Southworth points out that the NTSB hadn't yet "ruled out the role that the wheelsets may have played."

The NTSB uses a party system as part of its investigative process "which allows the sharing of factual investigative information during the early phases of an investigation" that "ensures a party to an investigation has sufficient information to take any immediate actions necessary to ensure safety."

This information comes with constraints "to prevent the uncoordinated release" of details. If those constraints are breached, the offending party could be removed from the investigation.

"Uncoordinated releases of information by parties to an investigation does not achieve transparency and does not further transportation safety or serve the public interest, rather, they only meet a party's self-interests," according to the NTSB.

Read the story online

OSHA holds 'Beat the Heat' contest to educate workers, employers on dangers of heat exposure

OSHA is holding a contest to help educate workers and employers about workplace heat hazards, raise awareness on the dangers of excessive heat and motivate employers and workers to prevent heat illness.

The agency's "Beat the Heat" contest is a nationwide competition "for stakeholders in all industries to share their best tools and other resources for informing workers about the dangers of heat exposure in indoor and outdoor workplaces."

This contest is open to all industries and will be judged by a panel of subject matter experts from OSHA and other federal agencies.

Winners will be chosen based on:

- innovation
- the best non-English language entry
- creativity
- indoor heat emphasis
- strength of message, and
- young worker emphasis.

All submissions must be received by June 9, 2023. For contest rules and submission instructions, click here.

Winners will have their submissions displayed on the OSHA website and featured in the agency's QuickTakes and The Heat Source newsletters. They will also receive a letter of appreciation from Assistant Secretary for OSHA Doug Parker, a Beat the Heat Challenge Coin and a congratulatory certificate.

Read the story online

Delaware latest state to legalize recreational marijuana

Delaware is the latest state to legalize recreational marijuana, allowing individuals 21 years old and older to possess and recreationally use up to 1 ounce of marijuana.

This occurred on April 23, 2023, when Governor John Carney failed to veto two bills that allowed for the legalization of marijuana.

Carney said he couldn't sign the bills because of his concerns about consequences recreational marijuana will have on children's health, as well as roadway safety, USA Today states.

The law legalizing recreational marijuana is effective immediately, according to law firm Jackson Lewis. Use of recreational marijuana in public is still illegal in the state.

Nothing in the law is "intended to impact or impose any requirement or restriction on employers with respect to terms and conditions of employment, including but not limited to accommodation, policies or discipline."

That means employers don't have to permit marijuana use at work or during work time. It also means employers can still drug test for marijuana and discipline employees for positive test results.

However, one big caveat for employers is that medical marijuana is still protected under Delaware's 2011 medical marijuana law. The recreational marijuana law doesn't change anything for medical marijuana users.

With that in mind, employers can't discriminate against anyone in hiring, termination or under any condition of employment if that discrimination is based on:

- the person's status as a medical marijuana cardholder, or
- the registered cardholder's positive drug test for marijuana unless the individual used, possessed or was impaired by marijuana on the premises of the place of employment or during their hours of employment.

Considering the growing list of states that are legalizing recreational marijuana, Jackson Lewis recommends that employers "review their drug and alcohol policies frequently to ensure that they are complying with all applicable state and local marijuana laws."

Read the story online

Was worker's hearing loss due to industrial noise or hereditary conditions?

Can a worker who claimed his hearing loss was due to on-the-job industrial noise collect workers' compensation if his audiograms indicated his condition was hereditary in nature?

The West Virginia Supreme Court upheld a denial of benefits because the worker's history of Ramsay Hunt Syndrome, bilateral tympanic perforation and head trauma was the more likely cause of his hearing loss.

William Fragmin was an employee of TC Energy Group. He filed a workers' compensation claim on Nov. 19, 2019, indicating he was exposed to loud noise for more than 18 years while working in compressor stations and around mechanical equipment.

Fragmin stated that he was first made aware of his noise-induced hearing loss Nov. 4, 2019, after undergoing an evaluation by his doctor. An audiogram revealed significant hearing loss on the low frequencies and a flat audiometric curve with no recovery in the high frequencies.

There was no commentary from the doctor regarding other potential contributing causes for Fragmin's hearing loss other than industrial noise exposure, resulting in a 34% impairment.

An independent medical examination conducted on Jan. 7, 2020, found that Fragmin's hearing loss began in his early-to-mid 30s and coupled with the fact that testing revealed flat severe loss, the doctor felt that this was "very suggestive" of hereditary hearing loss.

A claims administrator denied Fragmin's claim based on the results of the independent examination and the West Virginia Office of Judges upheld the decision, finding the independent examination offered sufficient evidence to justify denying the claim.

On review with the West Virginia Supreme Court, the court agreed with the Office of Judges, finding that Fragmin's doctor never discussed whether his pre-existing health conditions contributed to his hearing loss. Conversely, the independent doctor reviewed Fragmin's medical history in detail and attributed the entirety of his hearing loss to hereditary factors.

Read the story online

Using equipment beyond capacity, lack of training caused fatality in retention pond

A heavy equipment operator at a Wisconsin mine died when a pump raft he was working on in a stormwater retention pond capsized causing him to drown. Federal investigators said a lack of training and misuse of equipment led to the fatality.

Investigators with the Mine Safety and Health Administration (MSHA) found that the incident occurred because the mine operator:

- didn't provide safe access for miners to repair the pump and pump raft equipment
- failed to properly train miners on safe work procedures and how to properly work on pump raft equipment, and
- used pump rafts beyond the manufacturer's stated capacity by allowing miners to use the rafts as work platforms while performing maintenance and repairs.

Tony Killian was a heavy equipment operator at the AMI Silica LLC mine, a surface sand mine, in Jackson County, Wisconsin.

On March 22, 2022, Killian and a co-worker were assigned to replace discharge pipes on pumps in several stormwater retention ponds around the mine. They had been assigned to do this the previous day, but were unable to complete the task because of a buildup of ice on the retention ponds.

When Killian and his co-worker found the ice had melted sufficiently for them to access the rafts the pumps were installed on, they donned life jackets and took a 14-foot rowboat out to the first raft.

At the first pump raft, the two workers climbed out of the boat onto the raft and successfully replaced the pump's discharge pipe.

When they got to the second pump raft, they once again climbed out of the boat and unto the raft, which had been in this pond since 2017. Killian was standing on one of the plastic floats as he began to install a discharge line, and the float detached, causing Killian and his co-worker to fall into the pond.

As the co-worker surfaced, he couldn't see Killian and began searching for him. The co-worker couldn't locate Killian and had to swim to shore since the capsizing of the raft caused water to fill the boat they'd been using.

Meanwhile, Killian's supervisor stopped heavy equipment operation due to the start of rainfall. The supervisor and

two other miners drove out to check on Killian and his co-worker to see if they should stop work because of the rain.

As they drove toward the first pond, Killian's co-worker stopped them and told them what happened. They called 9-1-1, donned life jackets and swam out to the pump raft to search for Killian, but couldn't find him.

Emergency responders arrived a few minutes later and used a telehandler, boat and tow straps to get the capsized pump raft to shore. Killian was found entangled in the raft. He was pronounced dead on the scene.

MSHA investigators found that:

- the raft's plastic floats had cracked in several places from pressure exerted on them by ice because it was left in the frozen water of the pond each winter since 2017
- the pump raft had warning labels stating, "WARNING: This float system is designed to support only specific matching models of pumps … and should not be used as a platform for any other purpose"
- Killian's weight placed on the plastic float caused the cracks to break through and capsize the raft
- the mine operator knew the safe way to perform maintenance and repairs on the pump rafts was by bringing them to shore but it allowed its workers to access them by boat anyway, and
- Killian and his co-worker hadn't been trained how to properly perform maintenance and repairs to the pumps and pump rafts.

MSHA found that the root causes of the incident were that the mine operator:

- didn't provide safe access for miners to repair equipment on the pump raft
- failed to properly train miners assigned to work on pump raft equipment on safe work procedures, and
- used the pump raft beyond the designed capacity intended by the manufacturer by allowing miners on the raft while performing maintenance and repairs.

Read the story online

Feds find 205 safety, health violations at 16 mines during March 2023 impact inspections

Federal officials found 205 violations at 16 mines in 12 states during March 2023 safety and health impact inspections. Fifty-two of the violations were deemed "significant and substantial."

Impact inspections are done at mines that have a poor compliance history with federal Mine Safety and Health Administration (MSHA) requirements or previous accidents, injuries and illnesses.

MSHA first began impact inspections in April 2010 after the explosion at the Upper Big Branch Mine in West Virginia killed 29 miners.

The March 2023 impact inspections were conducted at mines in Alabama, California, Colorado, Kentucky, Indiana, Minnesota, Nevada, Oklahoma, Pennsylvania, Utah and West Virginia.

In the first three months of 2023, MSHA inspections identified 579 violations, including 165 significant and substantial and 13 unwarrantable failure findings. A significant and substantial violation is one that is reasonably likely to cause a reasonably serious injury or illness.

A Department of Labor news release offered an example of what one impact inspection found at an underground coal mine in Harlan County, Kentucky.

MSHA conducted the inspection on March 21 at INMET Mining's D-21 Mine, where the mine operator has a history of silica overexposures.

Inspectors issued 20 citations at the mine for violations of various safety and health standards, including 11 significant and substantial findings. MSHA found the operator failed to follow requirements for mine ventilation and roof-control plans and didn't provide miners with a safe and healthy workplace.

Ensuring proper ventilation as required by federally approved ventilation plans, as well as functioning water sprays and dust control equipment significantly reduce potential explosion and respirable dust hazards, according to MSHA.

An unsupported roof can cause collapses, leading to a fatality or serious injury to miners. By not posting a visible warning for an unsupported crosscut, the operator put miners in danger of walking inadvertently into an unsupported area that could collapse.

Read the story online

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

Four family members were charged with multiple counts of workers' compensation fraud for underreporting payroll for two of their California agriculture businesses.

The California Department of Insurance charged the family members after finding their companies underreported payroll to illegally save more than $2.1 million in workers' compensation insurance premiums.

This alleged fraud was discovered after a previous investigation resulted in the sentencing of a father and daughter for a similar scheme. The daughter, Angelita Barocio-Negrete, was the office manager and bookkeeper for two additional family-owned farm labor contracting businesses.

An investigation into those businesses revealed that they were also underreporting payroll to their insurance carrier.

Negrete M. Agriculture Inc., owned by Maria Negrete-Melchor and her daughter-in-law Melissa Bourbois, had a workers' compensation insurance policy issued by State Compensation Insurance Fund from December 2007 to January 2013. Barocio-Negrete, Negrete Melchor's daughter, was the office manager and bookkeeper at the time.

The company reported $552,517 in payroll, and a forensic audit revealed the company actually had $4,026,125 in payroll.

Negrete & Son's Ag Inc., owned by Albaro Barocio, Barocio-Negrete's brother, had a workers' compensation insurance policy issued by State Compensation Insurance Fund from November 2012 to November 2015. Barocio-Negrete was office manager and bookkeeper for this company.

This company reported $654,091 in payroll, and a forensic audit revealed it actually had $4,679,409 in payroll.

The underreporting by both companies resulted in a loss of $2,165,308 in premiums by State Compensation Insurance Fund.

All four family members were arraigned on April 25. They are scheduled to return to court on August 1, 2023.

Read the story online

OSHA addresses fall-related injuries, fatalities with new national emphasis program

OSHA has started a national emphasis program (NEP) addressing the leading cause of fatal workplace injuries and the violation the agency cites most frequently during construction industry inspections: Falls.

The program was announced May 1 and it will focus on reducing fall-related injuries and fatalities for people working at heights in any industry.

This NEP was launched based on historical U.S. Bureau of Labor Statistics (BLS) data and OSHA enforcement history.

BLS data shows that 680 of the 5,190 fatal workplace injuries that occurred in 2021 were associated with falls from heights. That comes out to about 13% of all deaths.

The program establishes guidance for locating and inspecting fall hazards and allows OSHA compliance officers to open inspections whenever they observe someone working at heights.

There's an outreach component to the program, as well. That will focus on educating employers about effective ways to keep their workers safe when working at heights. If an OSHA compliance officer determines an inspection isn't necessary after entering a worksite, they'll provide outreach on fall protection before leaving the site.

Read the story online

Kentucky legalizes medical marijuana, ensures employers still have 'substantial legal safeguards'

Kentucky is the most recent state to legalize medical marijuana, with residents being able to apply for a medical marijuana card with a written medical certification starting in 2025.

Governor Andy Beshear signed Senate Bill SB 47 into law on March 31, making it legal for Kentucky residents to use marijuana to treat qualified medical conditions.

While medical marijuana may now be legal in the state, employers will still have "substantial legal safeguards allowing them to restrict the use of medical marijuana in the workplace," according to law firm Frost Brown Todd LLP.

Employers will be able to prohibit registered medical marijuana cardholders from using equipment, machinery or power tools if the employer believes it will present an unreasonable safety risk. The law restricts cardholders from using or being under the influence while performing certain tasks such as operating "a common carrier aircraft, vessel or other machine-powered device."

Drug-free workplaces are still allowed under the law and employers can prohibit medical marijuana use through "reasonable detection and enforcement." Marijuana drug testing will be permitted and employers will be allowed to "act in accordance with test results."

Further, employers can test employees in "good faith" to determine if the cardholder was working while being impaired. This requires a behavioral assessment for impairment and drug testing "through established methods." If the results from the assessment and test prove impairment, then the "burden of proving non-impairment will shift to the employee to refute."

Medical marijuana also remains illegal under federal law, so Kentucky employers who are subject to the federal Drug-Free Workplace Act "must continue to prohibit employee medical marijuana use accordingly to avoid consequences thereunder."

The new law will shield employers against employee lawsuits for wrongful discharge or discrimination for medical marijuana use. Employees who are discharged for consuming medical marijuana or working while impaired by the drug will be ineligible for unemployment under certain conditions.

Read the story online

Warehouse distribution centers should prepare for increased regs on production quotas

Warehouse distribution centers need to prepare for increased regulation over their use of employee production quotas, considering new laws passed, or being considered, in California, New York and elsewhere.

California enacted first-of-its-kind legislation on how employers can use productivity data in 2021, New York followed in 2022 with its Warehouse Worker Protection Act, and several other states are now considering similar laws.

While this legislation varies by state, there are common themes running through most of these pending bills and laws, according to law firm Jackson Lewis. The majority of them are focused specifically on large distribution centers. For example, the California and New York laws apply only to employers with at least 100 employees at a single facility or at least 1,000 employees within the state.

Covered employers are typically required to provide written notice of the quota to employees when they're hired or within 30 days of the respective law's effective date. This notice must describe the quotas involved and explain what disciplinary actions could occur if an employee doesn't meet the quota. The laws remain unclear on the level of detail employers must disclose to employees about quotas, some of which are determined based on sophisticated algorithms or detailed engineered labor standards.

Employees have the right under these laws to request their own productivity data and the aggregate productivity data of their co-workers, with California and New York offering "broad protection to employees who request this data."

These laws also regulate the quotas themselves and prohibit any quota that could:

- prevent an employee from taking any required meal or rest breaks
- interfere with employees using restroom facilities, or
- cause compliance issues with occupational safety and health laws.

This means employers can't "consider paid or unpaid breaks as 'time on task' or 'productive time.'"

Read the story online

Sharpen Your Judgment

Can company avoid citation if it began forklift training program after incident occurred?



Safety Manager Pete Travers was starting a live hazardous materials clean-up exercise with the company's hazmat team in a closed-off section of the warehouse.

"OK, everyone," Pete said to the team. "The scene is set. We have several 55-gallon drums that were knocked over by that forklift. The operator is on the lift and appears to be unconscious, and the lift's motor is running. Let's see how you do."

The hazmat team tackled the challenge as Pete watched intently, occasionally taking notes about the team's approach.

"Pete, there you are," said John Jenkins, the company attorney.

As he approached, he saw the mock spill and came to a complete stop.

"Oh, I see you're busy," John said, turning pale and mistakenly thinking the mock spill was a real one. "Come see me when you have time."

Later, in John's office, Pete explained that it wasn't a real spill. John wasn't amused.

"Anyway, enough chit-chat," John said. "I need information on an OSHA citation we just received."

Supervisor put untrained workers on equipment

"OSHA says we aren't training our forklift operators," John said, getting straight to the point.

"As you saw earlier, we typically train our people in all aspects of safety," said Pete. "However, our supervisors recently dropped the ball on new-hire forklift training.

"We have two supervisors on second shift that can perform forklift training," Pete explained. "We also just hired several new workers for that shift.

"The week those new hires were supposed to be trained, one of the supervisors was on vacation and the other one was out sick with the flu," Pete continued. "The shift's remaining supervisor was under pressure to get a specific order out the door, so he put the untrained workers on forklifts and pickers."

"And one of them got hurt?" John asked.

"Yes, one of them fell from a scissor lift that was being used as a picker," said Pete. "He fell 9 feet to the floor and fractured his left elbow.

"All of the new hires have since been trained," Pete added.

"This is clearly a case of unpreventable employee misconduct on the part of the supervisor," John said. "We can definitely fight this."

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

The decision

No, Pete's company lost. In the real case, the company didn't have a required training program for powered industrial truck operators and an administrative law judge with the Occupational Safety and Health Review Commission (OSHRC) upheld the citation.

OSHA claimed that the worker was injured because he wasn't trained on how to safely operate the scissor lift he fell from.

The company, a small shipping business with 20 employees, admitted it didn't train its lift operators. However, it argued that the citation should be dropped because it had since certified all of its operators through a newly established training program.

Sharpen Your Judgment

Can company avoid citation if it began forklift training program after incident occurred? (continued)

Clear violation of the powered industrial truck standard

The judge found that the company clearly violated 1910.178(l)(1)(i) when it "did not ensure that each powered industrial truck operator is competent to operate a powered industrial truck safely, as demonstrated by the successful completion of the training and evaluation specified in this paragraph."

Further, one of the company's supervisors was nearby when the incident occurred and was fully aware that none of the employees were properly trained to operate the equipment they were using. In situations such as this, the supervisor's knowledge is imparted to the employer since the supervisor represents the employer.

In short, the judge found that OSHA proved every element it needed to in order to get this citation to stick while the company didn't provide much of a defense at all.

Analysis: Training needed before dangerous equipment is used

Safety professionals know that workers need proper, thorough training before they can be allowed to use powered industrial trucks and other potentially dangerous equipment.

Nothing about operating a forklift, bulldozer or crane can be construed as intrinsic knowledge. It's not "common sense." Just because someone can drive a car doesn't mean that they're automatically capable of safely operating a piece of industrial equipment.

Employers should keep in mind that driving a car is also a skill that requires training and isn't something that people just know how to do. When considering that industrial equipment is larger, potentially more dangerous and likely more expensive than the average car, it's logical to think that more extensive training is necessary.

Cite: *Secretary of Labor v. Gander and White Shipping Inc.*, Occupational Safety and Health Review Commission, No. 22-0494, 3/10/2023. Dramatized for effect.

Read more You Be The Judge in your Membership Dashboard

HAZARDS

Amazon, Norfolk Southern, Tesla make 2023 Dirty Dozen List



by Merriell Moyer



Amazon, Norfolk Southern Railroad and Tesla are among the companies who made The National Council for Occupational Safety and Health (National COSH) Dirty Dozen List for 2023.

The Dirty Dozen List is an annual list of the worst safety offenders and workers' rights violators in the U.S. In making the list, National COSH solicits information from its network of health and safety activists about companies that put workers and communities at risk.

Criteria for being included on the list includes:

- severity of injuries to workers
- exposure to unnecessary and preventable risk
- repeat citations by state and federal authorities, and
- activity by workers and their allies to improve their health and safety conditions.

The list is released annually during Workers' Memorial Week, April 24 through April 28, 2023, and coincides with the anniversary of the Occupational Safety and Health Act, which took effect April 28, 1971.

This year's Dirty Dozen includes:

Amazon

Multiple deaths at Amazon warehouses in 2022, OSHA citations at seven warehouse locations for exposing workers to ergonomic and other hazards and continuing state and federal safety investigations

means the retail giant is on the Dirty Dozen List once again.

Amazon worker Rafael Reynaldo Mota Frias died from cardiac arrest at a New Jersey Amazon distribution center on July 13, 2022. It was Prime Day, a high-pressure sales event for the company, and the facility didn't have air conditioning in its main work area, according to National COSH.

Frias was one of four U.S. Amazon workers who died on the job in July and August of 2022, with Rodger Boland and Eric Vadinsky dying in separate incidents at Amazon warehouses in New Jersey. Another Amazon worker, Alex Carillo, died in August after a forklift crash in the company's Carlisle, Pennsylvania warehouse.

OSHA said that "Amazon's rapid, demanding work practices 'cause serious injuries to workers,'" and in January and February 2023, the agency cited the company for exposing workers to ergonomic hazards in seven warehouses a cross five states.

The serious injury rate at Amazon warehouses in 2022 was 6.6 for every 100 workers, according to an analysis by the Strategic Organizing Center of data the company submitted to OSHA. That's more than double the rate of serious injuries at non-Amazon warehouses.

FedEx

Jessica James, a FedEx worker and team leader at the company's World Hub in Memphis, Tennessee, died Feb. 18, 2022, when the forklift she was operating flipped over and landed on her as she was crossing a ramp onto a trailer.

An investigation by Tennessee OSHA found that the ramp was defective and shouldn't have been in use. Inspection records from two months before the incident occurred stated that the ramp was severely damaged and needed repairs. The state agency found six serious safety violations and fined FedEx $26,000.

Two other Memphis-area FedEx workers were killed on the job in 2022. James Smith was crushed by a conveyor belt in May and a 48-year-old worker was killed in a two-vehicle crash in November.

Workers at two FedEx facilities in Georgia reported a lack of heat in the winter, no air conditioning in the summer, floors littered with trip and fall hazards, and falling packages that endangered their safety.

Data released by FedEx showed that the company's lost time injury rate increased by 13.6% between 2019 and 2021 and had 15 workplace fatalities in 2021, up from 10 in 2019.

Hanover Company, Lithko Contracting, Friends Masonry

Three workers died January 2, 2023, at a Charlotte, North Carolina worksite when scaffolding they were working on collapsed.

Jose Bonilla Canaca, Gilberto Monico Fernandez and Jesus "Chuy" Olivares fell 70 feet to their deaths at the site of a planned 17-story apartment building. Hanover Company owned the project. Lithko Contracting was the construction contractor. The three workers were employed by subcontractor Friends Masonry Construction.

National COSH records showed that Lithko Contracting had been cited by OSHA 14 times for safety violations dating back to 2013. The company was also cited by Indiana OSHA in 2018 for safety violations related to scaffolding.

Norfolk Southern and all other Class One freight railroads

National COSH included Norfolk Southern, BNSF, CSX, Kansas City Southern, Union Pacific, Canadian Pacific and Canadian National Railway under one heading for this year's Dirty Dozen List.

Why? Because "rail workers have been sounding the alarm about safety long before the derailment of a 149-car Norfolk Southern freight train created a plume of hazardous smoke that has impacted thousands of residents in East Palestine, Ohio."

Two years before the East Palestine derailment, Jason Cox, national representative of the Brotherhood of Railway Carmen, said, "Precision scheduled railroading has cut the workforce to the bare minimum. I have witnessed railroads … demanding one minute per car for safety inspections. It's only a matter of time before fatigued workers, unrealistic inspection policies and unqualified inspections result in a major incident in someone's neighborhood."

According to National COSH, over the past six years Class One freight railroads have reduced staff by 29%. U.S. Federal Railway Administration data shows that the train accident rate has increased by 25% between 2019 and 2022.

Rail workers are fatigued, overworked and on call at all hours of the day and night. For example, BNSF workers are reported to be

on call 90% of the time at all hours. After they get a call, they "have to be at the railyard in about 90 minutes to two hours, and they could be gone for days."

Occidental Chemical, Westlake Chemical

Occidental Chemical and Westlake Chemical insist that they can continue to use asbestos safely in their manufacturing facilities despite the fact that 40,000 people die each year in the U.S. from exposure to the hazardous substance.

They are two of the remaining three companies left in the U.S. that still use chrysolite asbestos to produce chlorine.

The third company, Olin Corporation, announced it would support a ban on the use of chrysolite asbestos proposed by the U.S. Environmental Protection Administration (EPA).

While Occidental and Westlake claim their employees know how to handle asbestos safely, workers have reported "asbestos splattered everywhere … it would be stuck to the ceiling and the walls." One worker reported that "we were constantly swimming in this stuff."

Packers Sanitation Service Inc., JBS Foods, Cargill, Tyson

A U.S. Department of Labor (DOL) investigation found that Packers, one of the largest food sanitation companies in the country, employed more than 100 children to clean dangerous equipment during overnight shifts at 13 meat processing plants in eight states.

Those plants were operated by JBS Foods, Cargill and Tyson.

National COSH states that "meat and poultry processing is among the nation's most hazardous injuries" where "workers suffer high rates of amputations, broken bones, illnesses and fatalities."

In one case, a 13-year-old girl was assigned to a night shift at a Grand Island, Nebraska plant owned by JBS. Her job duties included scouring "blood and beef fat from the slippery 'kill floor,' using high-pressure hoses, scalding water and industrial foams and acids."

In August 2022, a middle school nurse found chemical burns, blisters and open wounds on her hands and one knee, bringing her employment to an end.

Packers agreed to pay more than $1.5 million in fines. Another $1.3 million in fines were assessed to JBS Foods, Cargill and Tyson.

However, National COSH states that JBS Foods, Cargill and Tyson "have paid no fines and face no criminal penalties," while Packers "paid to settle the case but also faces no criminal penalties."

Sonoma WISE

Sonoma County is the heart of California's wine country, with 1,800 wine grape growers and 60,000 acres of viney

The farmworkers in the region "face health hazards from wildfires and extreme heat," according to National COSH. Farmworkers are 20 times more likely than workers in other occupations to die from heat-related causes. Wildfire smoke can cause asthma and other respiratory diseases.

During wildfires, these farmworkers were "instructed to report to work in areas where residents and other businesses had been evacuated."

The farmworkers organized to fight for better safety on the job, demanding hazard pay, disaster insurance, access to clean bathrooms and water, and community safety observers.

In response, several grape grower companies formed a group called Wine Industry for Safe Employees (WISE). They began lobbying county officials to reject those farmworker demands.

Swissport International AG companies

Swissport International AG is a global firm that provides baggage, fueling, cleaning and other services to major airlines. Swissport workers say that they're exposed to hazardous conditions on the job, including exposure to human feces.

Faulty equipment for cleaning airport toilets results in workers being sprayed with lavatory waste. Workers claim the company knows the equipment is malfunctioning but refuse to fix it.

OSHA has cited Swissport 35 times for safety violations over the past decade. The violations resulted from preventable incidents in which workers suffered bone fractures, crushed limbs and other injuries.

Tenet HealthCare Corporation

Tenet HealthCare has more than 100,000 employees and hundreds of hospitals, surgical centers and outpatient facilities.

The company's doctors, nurses and support staff reported that it cuts corners on patient and employee safety and retaliates against workers who speak out about unsafe conditions.

Employees have filed safety complaints against the company for failing to observe COVID-19 safety protocols and failure to provide PPE and sufficient staffing levels.

Tenet has paid more than $1.8 billion in fines and penalties to federal and state governments between 2001 and 2022 for false claims, bribery and kickbacks, violations of Medicare regulations, health and safety violations and wages and hour violations, according to National COSH.

Tesla Motors

A Tesla "gigafactory" is being built in Austin, Texas, as part of the Colorado River Project LLC, which is owned by the company.

Through the Colorado River Project, Tesla signed an agreement with Travis County with pledges to maintain a safe workplace. The company agreed that construction contractors and subcontractors would "maintain all relevant level 10 and level 30 OSHA-approved construction safety and certification."

A complaint filed with the U.S. DOL in November 2022 accused the company of violating that pledge. One worker claimed he and others "were provided with fake certificates from a project subcontractor, falsely claiming they had completed required safety courses."

Another worker, Antelmo Ramirez, died from extreme heat while working for Belcan Services Group, a contractor working on the gigafactory. OSHA cited Belcan for a serious health and safety violation and recommended a fine of $14,502. A lawsuit filed by Ramirez's family claims that Tesla "failed to properly hire, train and manage independent contractors" and failed to "monitor the temperature and weather conditions at the worksite."

Tesla itself has a long history of safety violations, with OSHA data showing more than 170 safety citations against the company and its subsidiaries at 73 locations between 2013 and 2022. Those citations include incidents with workers suffering fractures, burns, lacerations and amputations.

Trulieve Cannabis Corp.

On Jan. 7, 2022, Lorna McMurrey suffered a severe asthma attack after inhaling cannabis dust at a Truelieve marijuana production facility in Holyoke, Massachusetts. McMurrey died in the hospital several days later.

OSHA investigated the facility following McMurrey's death and issued citations for failing to evaluate chemical hazards. The agency recommended fines of $35,000. Truelieve had been cited by OSHA seven times since 2019 for various safety violations, including an incident in Pennsylvania where a worker was exposed to live wiring and suffered a "non-fatal electrocution."

Workers have reported that the company doesn't pay sufficient attention to worker safety and doesn't provide proper N95 masks.

Twin Peaks Restaurant

Twin Peaks is a restaurant franchise similar in concept to Hooters. Waitresses in certain locations have called for safety training to deal with aggressive customers and security guards to keep them safe when they leave the facility.

The restaurant chain has faced multiple lawsuits and discrimination claims, with employees claiming they were subjected to unwanted touching, lewd comments and other sexual harassment from management and customers.

Read this story online

Case Study

Want safer employees and fewer injuries? Get supervisors on your side



Safety professionals know that it's important to have supervisor buy-in when it comes to building an effective safety culture.

Supervisors are on the front lines where they can directly influence employees' attitudes toward safety – they can make or break a safety program.

However, sometimes getting supervisor buy-in isn't easy.

Compromise got them on board

For example, Marcene Olson, a safety manager at an Albany, Oregon college, was having trouble getting supervisor buy-in on surprise emergency drills.

The supervisors felt that the emergency drills were too much of an interruption to their work schedules and cost them valuable time.

Olson would let them know the specific week she was planning a drill, but wouldn't provide details on the exact date and time. The supervisors were also "less than enthusiastic" about the emergency protocol training Olson wanted them to attend.

But Olson knew how important it was to have the supervisors onboard with safety, so she sought a compromise. If they promised to attend the emergency protocol training, she'd give them the specific dates and times of emergency drills going forward.

They agreed to Olson's terms and attended the training with no complaints. The supervisors also stopped complaining about emergency drills because, thanks to the compromise, they could plan around them.

Remind them how influential they are to employees

Another way to get supervisor buy-in is to remind them how influential they are to employees.

Becky Nichols, a human resources and safety manager for a Kansas production company, told the supervisors at her workplace just how much influence they had over the workers they were in charge of.

Nichols followed this up with short, monthly emails on safety topics to all of the supervisors. These emails were short and got straight to the point, since she knew these supervisors were typically very busy.

One of the emails covered how important supervisors were for building a good safety culture. The email acted as another reminder that without their positive and proactive attitude toward safety, the employees wouldn't pay attention to company safety policies.

The buy-in Nichols got from the supervisors helped to reduce the amount of yearly reportable injuries to five or fewer at her facility.

Get them safety certified

Another way to get supervisors onboard with safety is for the company to invest in them with safety certifications.

Clint Wolfley, an EHS and QA Manager speaking at the Voluntary Protection Programs Participants' Association Safety+ Symposium, discussed how his company had supervisors take a class to get safety certifications so they could be called "safety trained supervisors."

This certification "validated they were properly trained and ready to respond to any scenario."

Wolfley said the supervisors initially weren't very excited about taking classes, but once they realized how much it would help keep their workers safe, the majority of them got onboard with the idea.

Seventy-five percent of the existing supervisors got certified and Wolfley's company made it a requirement for new supervisors to get certified within six months of their start date.

This may not be possible for all companies, as the certifications did cost money, but Wolfley said there was a great return on that investment: a 31% reduction in injuries since the supervisors began getting the certifications.

Read More Case Studies in your Membership Dashboard

What Would You Do?

Were they really safe if they weren't using their fall PPE correctly?



As Manager Mike Kelly was on his morning safety walk through the warehouse, he noticed that several of the tall storage racks were stripped of products and missing cross beams.

What is going on? Mike thought.

As he approached the racks, he saw several workers returning from their morning break and donning fall PPE. There were also a pair of scissor lifts nearby.

That's right, they're making some changes to the rack configuration while we're slow, Mike thought.

"Good morning, guys," Mike said. He watched as they put on their fall protection equipment, noting that each of the workers had their harnesses on correctly.

"Good morning, Mike," one of the workers, Jerry Clinger, said. "You coming over to check on our work?"

"I was just passing by when I remembered this work was being done today," said Mike.

While Mike was talking to Jerry, he saw several workers climb onto a scissor lift and elevate it to the top of a rack. They attached lifelines to their harnesses and began to work.

'There shouldn't be more than one lifeline per anchor'

That's when Mike noticed that two of the lifelines were attached to the same anchor point.

"Hold on!" Mike said, looking up toward the employees on the rack. "You two aren't anchored properly. Stop what you're doing and come down here, please."

"What's the problem?" Jerry asked. "They've got their harnesses on and I can see they've attached them to the anchor."

"That's the problem," Mike said. "There shouldn't be more than one lifeline per anchor."

"There are only so many good anchor points," said Jerry, his frustration showing. "You can't tell me that these heavy steel uprights, which are embedded in the concrete floor, couldn't support the two of them if they fell.

"We made this as safe as we could," Jerry added.

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

Mike was right for pointing it out

Multiple lifelines shouldn't be attached to a single anchor. Even if they didn't know that, Mike was right for pointing it out since it could lead to injury or worse, if they fell.

Jerry mentioned that they were working over a concrete floor. So if they both fell for some reason and that anchor point broke, they'd be dealing with some pretty terrible injuries, at the very least.

Anchor points have their own weight restrictions

Jerry pointed out the heavy steel uprights and the fact those uprights were embedded into the concrete floor. What he fails to notice is that those things aren't what his co-workers were anchored to.

The anchor points are separate pieces with their own weight restrictions. It's just not safe to have more than one person tied off to an anchor.

Improper use of anchor points, PPE causes fatality

Fall PPE, lifelines and anchor points have very specific requirements when it comes to their use. Failure to use them properly is just as bad as not using them at all.

For example, investigators with the Washington State Fatality Assessment & Control Evaluation (FACE) Program found that improper use of lifelines and anchors led to a roofer's death in July 2022.

The roofer was part of a nine-member crew installing a low-pitch roof. Crew members installed anchors and nine lifelines on the roof about a week before they began the actual job.

On the day of the incident, the crew used a boom-supported elevating work platform to reach the roof. Not long after they started, it began to

What Would You Do?

Were they really safe if they weren't using their fall PPE correctly? (continued)

rain, which made the roof slippery. They used the platform to get down and left their lifelines about 20 feet from where they got off the roof.

When the rain stopped, they returned to the roof. The roofer made it about halfway to his lifeline when he fell from the unprotected edge. He grabbed some steel framing as he fell, but lost his hold and dropped 33 feet to the ground below.

The crew's foreman performed CPR, but the roofer died at the scene.

Investigators find fall equipment wasn't properly installed, used

FACE Program investigators found that:

- fall protection equipment wasn't properly installed and used
- roof anchors were installed with unapproved and fewer screws than specified by the manufacturer
- multiple lifelines were attached to a single anchor
- lifelines were connected together and wrapped around beams
- the employer didn't have a required fall protection work plan onsite, and
- a walk around safety inspection hadn't been documented.

To prevent a similar incident from occurring, FACE Program investigators recommended that employers:

- ensure that fall prevention systems are installed in accordance with OSHA requirements
- develop a written fall protection work plan, including each area of the workplace where the employees are assigned and where fall hazards of 10 feet or more exist
- document walk-around inspections and make those documents available for review
- develop policies that require workers to always remain attached to lifelines and to place them so they're able to reattach and maintain 100% tie-off when moving between platforms, and
- provide and frequently reinforce training on proper use of fall PPE with an emphasis on always attaching before detaching when switching lifelines to maintain 100% tie-off.

Read more What Would You Do? in your Membership Dashboard

WHILE THE EMERGENCY MAY BE OVER, **COVID-19 QUESTIONS STILL REMAIN**



COVID-19

The end of the COVID-19 national emergency is near: 7 things employers need to know



by Merriell Moyer

The public health emergency that was declared by federal health agencies is scheduled to end May 11, and President Biden has signed legislation ending the COVID-19 national emergency. But what does that mean for employers?

Ever since the COVID-19 pandemic began, employers and safety professionals have had to struggle with workplace mandates and guidance that were ever-evolving, confusing and often inconsistent.

Finally, after three long years, there's a new normal "with COVID-19 becoming an endemic (but still deadly) illness, like the flu," according to Fiona Ong, an attorney with law firm Shawe Rosenthal.

Ong goes on to point out that "much like the flu, there are certain precautions that employers may still take. In addition, there may also be legislative or regulatory mandates that linger beyond the end of the national and public health emergencies."

With that in mind, here are seven things employers and safety professionals need to keep in mind as the U.S. COVID-19 national emergency ends:

1 OSHA's COVID-19 guidance

OSHA released guidance regarding COVID-19 in the workplace back in January 2021 and updated that guidance multiple times. While the guidance wasn't mandatory, following it helped keep employers compliant with the General Duty Clause, which requires employers to "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."

The agency hasn't updated its COVID-19 guidance since August 16, 2021, after it had adopted guidance outlined by the U.S. Centers for Disease Control and Prevention (CDC) regarding masking, testing, how to handle exposures based on vaccination status and the length of time needed to isolate exposed workers.

That CDC guidance also stated that "other workplace protections, such as barriers and distancing, were not required for vaccinated employees."

All of that has since been modified by the CDC, but the OSHA guidance, which is based on the CDC's older advice, is still technically in effect.

OSHA's COVID-19 webpage states that there's updated guidance "coming soon" but it doesn't say when.

In the meantime, attorney Ong said, "Employers should assess their workplace and take reasonable steps to protect workers not only against COVID-19, but other respiratory diseases like the flu."

2 CDC testing guidance

Current CDC testing guidance recommends immediate testing if symptoms of COVID-19 are present. If the employee was exposed to COVID-19 and doesn't have symptoms, then the guidance suggests waiting five days after the exposure before testing.

The CDC also recommended that testing be done before individuals come into contact with someone at high risk for severe COVID-19.

That means employers can still require exposed or symptomatic employees to test and isolate in accordance with this guidance.

3 CDC isolation guidance

The CDC's revised isolation guidance is more streamlined now that it ever was before. Attorney Ong suggests that employers still follow these isolation guidelines for employees who test positive.

That guidance can be found here.

4 CDC exposure guidance

According to recent CDC guidance for individuals exposed to COVID-19, isolation isn't required for those without symptoms, only for those who actually have COVID-19 as confirmed by testing.

Again, those without symptoms should wear a mask for 10 days when around others or in public, even with a negative test, and test at least five days after exposure, as per the CDC guidance.

"While employers may choose to impose greater restrictions than the CDC recommends, they should be thoughtful about the impact of such a requirement on employees," Ong states. "If the employer does not provide paid leave for such circumstances, this may be economically harmful to the employee. In addition, it is important to ensure that any such restriction is applied consistently, in order to avoid discrimination claims."

Attorney Ong further recommends that employers notify their local Board of Health for guidance if an actual COVID-19 outbreak would occur in the workplace.

5 CDC masking guidance

Most mask mandates "at the state and federal level have not been in effect for quite some time," according to Ong.

Current CDC guidance states, "People may choose to mask at any time," and employers should support employees who choose to continue to mask.

As stated previously, individuals who have COVID-19 should wear a mask for 10 days following the onset of illness or exposure unless they test negative twice, 48 hours apart with an antigen test.

And employers can maintain protocols that exceed CDC recommendations, but they should also "provide reasonable accommodations as necessary for medical or religious needs."

However, Ong only recommends imposing mask mandates if the employer "can articulate a legitimate business reason for doing so."

6 Vaccine mandates

Most private employers aren't subject to vaccine mandates. However, the "courts continue to battle over the federal government's mandate for government contractors, but this mandate is not currently being enforced."

One vaccine mandate that is in effect is the Center for Medicare and Medicaid Services' regulation requiring Medicaid and Medicare-certified healthcare providers to mandate COVID-19 vaccination for all applicable staff. That one isn't set to end until November 2024.

State laws could complicate the vaccine mandate issue, with several states having passed laws prohibiting "employers from taking any employment action based on COVID-19 vaccination status, which effectively prevents vaccine mandates."

If an employer is in a state that doesn't have such a law then it can choose whether to mandate vaccinations or not. For those that do decide to institute a vaccine requirement "it is important that they provide reasonable accommodations for medical or religious reasons, unless the

accommodation results in an undue hardship for the employer."

Why? Because this has been a "fertile area of litigation over the past several years."

7 Illness reporting

"Employers can and should require employees who are working in-person to report when they have symptoms of COVID-19 (or flu, for that matter) or if they test positive," according to Ong.

The reason is because it is a health and safety issue since co-workers could be exposed to the disease.

OSHA also requires that employers record workplace illnesses on the OSHA 300 log, and COVID-19 could be considered work-related if the employee is infected as a result of their work duties.

Currently, for COVID-19, OSHA's reporting requirement applies:

- if an employee is hospitalized within 24 hours of exposure to COVID-19 at work, and
- the report must be made within 24 hours of knowing both that the employee has been hospitalized and that the reason was a work-related case of COVID-19.

Should an employee die from a work-related case of COVID-19 within 30 days after exposure, that death must be reported by the employer within eight hours of knowing about the death and knowing that the cause of death was a work-related case of COVID-19.

Read this story online

Who Got Fined & Why

3 injuries in 5 months is a sign of a broken safety culture: OSHA takes action

The facility in question can expect routine OSHA inspections now that's it's been placed in the Severe Violator Enforcement Program.

What happened: OSHA visited Graf Custom Hardwood, a hardwood flooring mill in Portsmouth, Ohio, three times in a five-month span to investigate worker injuries on machinery. The most recent injury involved a worker's fingertip being partially amputated after it was caught in an unguarded belt and pulley. This was the second finger amputation on unguarded machinery in the space of a calendar year.

Result: The company's been cited for machine guarding violations, inadequate machine safety procedures, trip hazards for surfaces filled with debris and various electrical safety violations. Its latest fine totaled $333,693. Graf can expect more five- to six-figure fines if it doesn't overhaul its safety program and procedures quickly to prevent future debilitating injuries to its employees.

'Is this waste hazardous?' No one at facility asked – now it's paying a fine

Many facilities in construction, manufacturing and services generate some type of hazardous waste. Examples include partially filled cans of paint, mercury-containing batteries and flammable fuels. Employees who handle them and work around them need to be aware of the potential risks.

What went wrong: Weiler of Knoxville, Iowa, a road construction equipment manufacturer, didn't separate hazardous waste streams that is stored on site. Ignitable and toxic wastes needed to be stored separately and in safe containers to prevent spills and vapors from being released.

Result: Weiler was cited by EPA under the Resource Conservation and Recovery Act for failing to:

- conduct hazardous waste determinations for ignitable and toxic waste streams
- ensure employee safety
- coordinate with first responders in case of a hazardous waste release, and
- properly handle hazwaste.

Note: The company took immediate action to come into compliance. Local firefighters and emergency response personnel are aware of what kinds of waste that Weiler is storing and where in its facility.

Read more Who Got Fined & Why in your Membership Dashboard

Real Life Safety

Electrician falls while using another company's ladder: Who's liable for the injuries?

"Yo Frank! Where'd you get that shirt?" asked Manuel Ortiz, an electrician. He'd just arrived at a high-rise construction site.

"There's one for you too," Frank replied, pointing to a box. "We're employees of Allied Construction today, I guess."

"You mean they want us to wear their shirts? OK fine by me, I could use a new work shirt," Manuel laughed. "Mine are all stained or torn."

Manuel spent the better part of the morning running electrical conduit from room to room at the floor level. He needed to run conduit in a ceiling space and called out to Frank. "Hey man, do you know if I should wait until we've got scaffolding up here?"

"I don't know," said Frank. "I saw some ladders against the wall outside the men's room."

Manuel sighed. "I hate using other people's ladders," he grumbled. "But I want to get this done today."

Manuel carried an a-frame ladder back to his work area. He ran wiring in the ceiling while standing on the fourth or fifth rung of the ladder for about half an hour. Manuel moved the ladder to another spot of the room to work and climbed up with conduit in his hand.

As he stepped up one rung, he felt the ladder shake and give way under him. "Whoa!" Manuel came crashing down to the floor and immediately felt pain shoot through his body.

Job site supervisor: 'Why didn't he use scaffolding?'

"Make sure we don't throw out this ladder," said Bill, the safety manager. "We'll need this as evidence. I'm red-flagging it to make sure no one uses it."

"That's fine," said Victor, the supervisor for Allied Construction. "There's nothing wrong with the ladder though, best as I can tell."

"There's a piece of plastic broken off at the top of the a frame," said Bill.

"That probably broke off when it slammed to the ground," said Victor. "For all I know, that electrician was too heavy to use this ladder. Check the rating."

"OK we'll take that into account," said Bill. "I noticed he was wearing one of our shirts when the ambulance came for him. That doesn't help us. He's a contract employee."

"Yeah that's right, we hired them to do electrical work," said Victor. "Nothing out of the ordinary. What I'd like to know is why he didn't use a scaffold?

"We've got scaffolding for doing that kind of work," said Victor. "All he had to do was ask!"

Court won't let the company off the hook

The injured electrician sued his employer and the general contractor in charge of the project for negligence, and damages related to his injury.

The G.C. argued the worker should've used a scaffold, and also tried escaping liability by saying it wasn't responsible for the man's work duties. But a host of facts blew holes in that case.

Workers on the site testified they weren't told about scaffolds being available. And the workers were told to wear shirts advertising the company's name and image.

Result: The G.C. failed to get summary judgment from the court. It will have to pay toward the worker's medical bills, lost wages and damages.

Cite: *Romero v. One57*. This case has been dramatized for effect.

Read more Real Life Safety in your Membership Dashboard

3 business reasons employers need to reduce worker injuries



by Merriell Moyer



Safety professionals want to reduce worker injuries because they want to see employees go home safe every day. However, reducing the amount of worker injuries also helps the company by reducing costs.

How? By saving on costs related to workers' compensation, potential OSHA fines and recruiting new workers to replace those too injured to work.

A report from the U.S. Bureau of Labor Statistics (BLS) in 2022 revealed that there were 2.6 million nonfatal workplace injuries and illnesses reported in 2021.

Those injuries cost U.S. employers almost $167 billion in 2021, according to a National Safety Council (NSC) report.

The same report breaks that figure down to:

- $1,080 per injured worker
- $1,340,000 per worker death, and
- $42,000 per medically consulted injury.

The NSC said those figures include:

- wage and productivity losses
- medical expenses
- administrative expenses, and
- uninsured costs such as the value of time lost by workers other than those injured in an incident along with the cost of time spent to investigate injuries, write up injury reports and perform related tasks.

Workers' compensation: Average cost per claim = $41K

The average workers' compensation claim costs employers $41,353, another NSC report states.

But that figure can go significantly higher depending on the nature of the injury and the affected body part.

For example, the most costly lost-time workers' compensation claims by nature of injury are for those resulting from amputation, which averaged $118,837 per claim filed in 2019 to 2020. The next highest costs were for injuries resulting in:

- fracture, crush or dislocation ($60,934)
- other trauma ($60,288), and
- burns ($48,671).

In 2019 and 2020, the most costly lost-time workers' compensation claims by part of body were those involving the head or central nervous system. Those averaged $93,942 per claim filed. The next highest costs were for injuries involving:

- multiple body parts ($62,859)
- hip, thigh and pelvis ($59,758)
- leg ($59,748)
- neck ($59,391), and
- arm or shoulders ($49,116).

The BLS breaks it down in a slightly different manner, showing the cost per employee hour worked. With that in mind, for 2022 the total employer compensation cost for private industry averaged:

- $40.23 per hour worked
- $28.37 per hour for wage and salary costs, accounting for 70.5% of employer costs, and
- $11.86 per hour for benefit costs, accounting for 29.5% of employer costs.

No matter how it's broken down, the monetary cost of workers' compensation to an employer is extremely high.

OSHA violations can cost up to $156K

Safety professionals know that OSHA collects employer injury and illness data on an annual basis, which it publishes online.

The agency says this information is important because it:

- helps identify unsafe conditions and workplace hazards that may cause occupational injuries and illnesses
- is the first step to control and reduce occupational injuries and illnesses
- provides employers, workers and the public with valuable insights to make informed decisions, and
- improves research on the occurrence, prevention and control of workplace hazards.

"Recordkeeping is a valuable tool that provides a road map to where and why injuries and illnesses occur and where improvements are needed," said Assistant Secretary of Labor for OSHA Doug Parker. "By increasing access to this data, we are providing information that can help people better understand the overall effectiveness of safety and health systems in the workplace."

OSHA also uses this information to help it pinpoint the industries it needs to focus its enforcement efforts on. That means higher injury rates could mean increased scrutiny from OSHA.

And OSHA fines aren't cheap. The agency recently increased its penalties to keep up with inflation, something it does annually, meaning maximum fines for:

- serious and other-than serious violations have increased from $14,502 per violation to $15,625 per violation, and
- willful and repeat violations have increased from $145,027 per violation to $156,259 per violation.

Those new figures apply to any fines assessed after Jan. 17, 2023, for OSHA violations that occurred after March 23, 2018.

Cost of recruiting: $6.7K to replace 1 employee

Injuries not only cost money, they also cost time – as in valuable time that employers lost to injury when their injured employees could've been productive.

Some employers worry about productivity if they see workers linger in the break room a few extra minutes after a break. That means they should also be concerned about the 70 million lost worker days – yes ***days***, not hours – resulting from injury in 2021.

That can translate to lost profits for the company if the loss of a worker on the production line or warehouse floor results in missed deadlines. Of course, that loss multiplies the more workers a company has out due to injuries.

And what if an employer has to replace a worker whose injury resulted in them never being able to work again?

"Recruiting can be a costly expense between job postings, background checks, onboarding and more. But it can be challenging for an employer to conceptualize just how much it can cost your company in money, time and resources," according to HRMorning.

HRMorning says that "it can cost more than $6,700 to replace a worker who makes $15 per hour. Plus, turnover for a 50-person workforce can cost as much as $168,000."

Further, the cost of a bad hire can cause:

- strain on other employees
- increased errors
- low team morale, and
- lower productivity.

Even if a good candidate is found, "it can take six months after hiring to break even on recruiting costs."

All of these costs can be easily avoided

As safety professionals already know, all of these costs can be easily avoided by creating and adhering to a safety program. That program should include thorough training, enforcement of the company's safety rules, and participation and

buy-in from both management and employees. According to Vector Solutions, reducing incidents can cut absenteeism and turnover, increase productivity, and raise workplace morale by demonstrating a commitment to employee health and safety.

Need proof?

A study conducted in California in 2012 examined the effect of random Cal/OSHA inspections on a company's injury-related outcomes and performance.

Researchers used a regression model to compare changes over time in companies randomly chosen to receive inspections to changes in uninspected companies.

The number and cost of injuries declined after an inspection, researchers found. The study also found no evidence that the companies Cal/OSHA inspected had lower employment, sales or credit ratings or were less likely to continue to operate than companies the agency didn't inspect.

Researchers were confident that the estimated effects were "attributable at least in part to OSHA inspections," although other factors could have played a part.

Additionally, federal OSHA, in making its business case for safety and health, found that:

- workplace safety was among the top criteria employees consider when evaluating a new job offer from a small business, according to a survey from an insurance company
- there is a direct positive correlation between investment in safety, health and environmental performance and its subsequent return on investment
- more than 60% of chief financial officers in one survey reported that each $1 invested in injury prevention returns $2 or more
- more than 40% of chief financial officers cited productivity as the top benefit of an effective workplace safety program, and
- the average worksite in OSHA's Voluntary Protection Program has a Days Away Restricted or Transferred (DART) case rate of 52% below the average for its industry, which translates to greater profits as workers' compensation premiums and other costs plummet.

Read this story online

Training Tips

Preventing hand injuries: Training ideas that work

Workers may ignore hand PPE for a variety of reasons. But an estimated 25% of lost-time incidents involve injuries to the hands or wrists.

Try devoting a training session to the importance of hand safety on the job in order to bring them into compliance.

Here are some points you may want to emphasize in your training:

- Hit close to home. Remind workers of all the things they could miss due to a hand injury: everything from playing catch with their kids to typing an email.
- If the glove fits … Make sure workers have some say in PPE. If they think gloves are too heavy or uncomfortable, they're less likely to wear them. Let workers try out various models and pick the one that works best for them.
- Conduct inspections. Examine workers' hands and fingers for small nicks or cuts. Finding these could tip you off to whether they're actually wearing PPE on the job (and if it really protects them).

Read more Training Tips in your Membership Dashboard

Report identifies 5 safety issues that led to 2020 Bio-Lab fire, toxic gas release



by Merriell Moyer

Poor planning for a hurricane, lack of oversight for reactive chemicals and failed fire fighting systems all contributed to the Aug. 27, 2020 fire and toxic gas release at a Bio-Lab facility in Westlake, Louisiana.

The U.S. Chemical Safety and Hazard Investigation Board (CSB) released its final investigation report on the incident, which was a result of Hurricane Laura's severe winds tearing the roofs off buildings at the facility and exposing reactive chemicals to hurricane rainwater.



Incident occurred when rainwater contacted reactive chemicals

Pool and spa chemicals containing trichloroisocyanuric acid (TCCA) were manufactured at the Bio-Lab facility. TCCA products slowly break down and release chlorine when placed into large bodies of water, such as pools and spas. However, when TCCA comes into contact with small amounts of water and doesn't dissolve, it will undergo a chemical reaction that generates heat and produces toxic chlorine gas.

In preparing for Hurricane Laura, Bio-Lab had begun moving its supply of TCCA to a facility in Georgia. By the day of the incident, the company had successfully moved 825,000 pounds of the chemical, but several truck loads were missed, leaving behind more than 1 million pounds of TCCA.

As the Category 4 hurricane made landfall, its strong winds damaged buildings at the Louisiana facility, in some cases completely tearing off roofs where the TCCA was stored. Rainwater from the storm contacted the chemical, initiating a chemical reaction that caused a fire and created a large plume of hazardous gases, including toxic chlorine.

A portion of Interstate 10 had to be closed for more than 28 hours and a shelter-in-place order was issued for the surrounding community because of the hazardous gas release.

There were no employee, public or emergency responder injuries reported.

The CSB investigation report identifies five safety issues that contributed to the incident:

1 Extreme weather preparation

Bio-Lab failed to learn the importance of preparing for extreme weather after the 2017 Arkema incident in Crosby, Texas, which also occurred following a Category 4 hurricane.

The Arkema incident occurred after extensive flooding from Hurricane Harvey, which caused organic peroxide decomposition. That chemical reaction led officials to institute a 1.5-mile evacuation zone during the incident.

Despite the lessons the industry learned from the Arkema incident, Bio-Lab didn't implement industry guidance for extreme weather preparation that was updated and published to prevent the occurrence of a similar event.

2 Process hazard analyses implementation

TCCA is not covered by the OSHA Process Safety Management (PSM) standard. Bio-Lab voluntarily implemented some elements of the PSM standard and even conducted a 2010 Process Hazard Analysis (PHA).

However, the company didn't implement a PHA recommendation to determine whether buildings at the facility could withstand damage from hurricane-strength winds.

If the company had implemented that recommendation, it could have identified that the buildings were susceptible to damage from hurricane-strength winds. Controls could then have been put in place to prevent the TCCA from being exposed to hurricane rainwater.

Those controls would have prevented the incident.

3 Emergency preparedness and response

Bio-Lab experienced an approximately five-and-a-half-hour delay in responding to the event due to an "inadequate and largely nonfunctional" fire protection system and the absence of automated sprinkler systems.

This led to an unnecessary increase in the:

- amount of TCCA that underwent a reaction
- quantity of toxic chlorine released, and
- extent of the facility damage.

The company didn't adequately maintain its fire protection system and failed to ensure that enough of its staff, including its assigned hurricane crew, knew how to activate a backup generator. Operation of the backup generator was important due to the power outage caused by the hurricane.

4 Adherence to applicable hazardous materials codes

TCCA is not covered by the OSHA Process Safety Management (PSM) standard. Bio-Lab voluntarily implemented some elements of the PSM standard and even conducted a 2010 Process Hazard Analysis (PHA).

The Bio-Lab plant was built in 1979 and didn't conform to the existing National Fire Protection Association (NFPA) codes for high-hazard industry occupancies.

Required fire detection and automatic fire sprinkler systems weren't used in the facility. These systems are required under the NFPA 400 Hazardous Materials Code. They're also required by the state for structures built or remodeled after July 1, 2017.

However, existing facilities in Louisiana, such as Bio-Lab, are grandfathered to the state-adopted codes and standards at the time of construction unless changes are made or if the State Fire Marshal receives a complaint.

If the Bio-Lab buildings involved in the incident would have been equipped with automatic extinguishing systems, it's likely that large amounts of water would have been applied to the TCCA earlier in the incident. That would have significantly reduced both the size of the fire and the toxic gas cloud.

5 Regulatory coverage of reactive chemical hazards

Despite the fact that TCCA can decompose and release toxic chlorine gas when exposed to moisture, the chemical isn't regulated under the OSHA PSM standard or the U.S. Environmental Protection Agency (EPA) Risk Management Program (RMP) rule.

That means Bio-Lab wasn't required to use baseline process safety management system elements to manage the safety of its TCCA-related operations under these regulations. OSHA and the EPA currently use predefined chemical lists to identify the processes that need to be covered under their respective rules.

A 2002 study conducted by the CSB found that relying solely on lists of chemicals is an inadequate approach for regulatory coverage of reactive hazards. To improve, the CSB states that it would require "regulators and industry to address the hazards from combinations of chemicals and process-specific conditions rather than focus exclusively on the inherent properties of individual chemicals."

The CSB also found that OSHA and EPA didn't properly consider reactive chemical hazards when they developed their chemical lists, resulting in a lack of regulatory coverage over many of these chemicals.

This regulatory coverage gap relating to reactive chemicals and their hazards:

- points to a weakness in relying on fixed chemical lists to determine regulatory coverage
- contributed to this incident, and
- contributed to many other reactive chemical incidents over the past three decades.

Read this story online

about Safety News & Training Alert

Safety News & Training Alert, part of the **Success*Fuel*** 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



Merriel Moyer

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



Scott Ball

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

Get In Touch

Phone:
484-207-6261

Email Customer Support:
support@safetynewsalert.com

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

About SuccessFuel

at Success*Fuel*, we equip professionals to do great work with news and analysis, online workshops, step-by-step training guides, digital newsletters, and much more. Our sister brands include:

RESOURCEFUL FINANCE PRO
Powered by SuccessFuel

HR MORNING
Powered by SuccessFuel

BetterBuys
Powered by SuccessFuel

Premier Learning Solutions
Convenient. Affordable. Actionable.

Resourceful Compliance
Powered by SuccessFuel

resourcefulmanager
Powered by SuccessFuel

SWAG ENVY
Powered by SuccessFuel

Not an SNA INSIDER yet?

This monthly newsletter is just one of the benefits of being an Safety News Alert INSIDER. Find out more at www.safetynewsalert.com/join-insider

become an Insider