

May 3, 2021

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SAFETY NEWS ALERT

Safety News Alert, part of the Catalyst Media Network, keeps safety pros up to date on the latest OSHA news, safety training ideas, workers' comp cases and injury cases from other companies. Read what more than 334,000 safety pros turn to regularly for occupational safety information. Safety News Alert's editorial staff is lead by veteran Editor-in-Chief Fred Hosier.

How important is supervisor buy-in? It can mean life or death

■ OSHRC chair: Incident could've been prevented

Having supervisor buy-in with a safety program is a key element in ensuring employees remain safe on the job, as supervisors typically interact with workers more than other levels of management. But how important is it?

A supervisor's commitment to safety could mean the difference between an employee going home at the end of the day or a worker suffering a fatal injury, as a recent Occupational Safety and Health Review Commission (OSHRC) decision demonstrates.

A supervisor and two linemen from MasTec Advanced Technologies were

given a project involving moving three overhead electrical distribution lines from existing 45-foot-high wooden poles to new 50-foot-high weather-resistant concrete poles in Merritt Island, FL.

Technical mistakes

The linemen – T.M., who was designated as lead despite only 18 months of experience, and Jonathan Jinks, a lineman with 20 years of experience – worked from aerial buckets while the supervisor, Ed Bilodeau, watched from below.

However, according to the OSHRC
(Please see Supervisor buy-in ... on Page 2)

FEDERAL SAFETY LEADERSHIP

Walsh confirmed as new head of Department of Labor

The Senate confirmed Marty Walsh as secretary of the Department of Labor (DOL) with a 68 to 29 vote in favor of the Boston Mayor and former leader at the Laborers' Union Local 223.

As head of the DOL, Walsh will oversee both OSHA and MSHA.

"I have been a fighter for the rights of working people throughout my career, and I remain committed to ensuring that everyone – especially those in our most marginalized communities – receives and benefits from full access to economic opportunity and fair treatment in the workplace," Walsh said in a DOL news release.

Walsh spoke about his own life experiences during his confirmation hearing, offering some insight into his view of the work he'll be doing at

the DOL.

"Workers' protection, equal access to good jobs, the right to join a union, continuing education and job training, access to mental health and substance use treatment. These are not just policies to me, I lived them," Walsh said, according to CNN.

Focus for near future?

As Secretary of Labor, he's likely to aggressively advocate for tighter silica dust rules because his father's health was impacted by dust exposure on the job at construction sites.

Walsh and the "new face of OSHA, Jim Frederick," are both former union officials and are known to be pro-union, so the AFL-CIO Top 5 wish list, released in February, could carry some weight in the new DOL.

GUILTY PLEA

Supervisor illegally removed asbestos

A supervisor specializing in asbestos abatement pleaded guilty March 26 to illegally removing and disposing of asbestos at a New York work site.

Gunay Yakup is scheduled to be sentenced July 27 and faces a maximum penalty of five years in prison.

In the summer of 2016, Yakup joined an existing conspiracy to illegally remove asbestos from a former IBM site in Kingston, NY, according to the Department of Justice.

Pressure to speed it up

The facility contained more than 400,000 square feet of regulated asbestos materials along with another 6,000 linear feet of pipe wrapped in the same material.

Yakup, who had special asbestos abatement training, was pressured by other conspirators to “expedite the removal of asbestos at the site.”

In speeding up the removal, he and his crew violated the Clean Air Act’s work practice standards addressing

how asbestos can be stripped, bagged, removed and disposed of safely.

Yakup later admitted he and the other conspirators removed a substantial amount of asbestos material from the worksite in violation of the standards, including dry removal with visible emissions and storing asbestos-containing materials in open containers on site.

Supervisor buy-in ...

(continued from Page 1)

decision, Bilodeau spent most of his time watching from inside a truck parked a short distance away.

At one point, without anyone noticing, T.M. made several technical errors, including improperly insulating one of the live lines, and was electrocuted.

Unpreventable misconduct?

OSHA cited MasTec for failing to properly insulate the energized line and for encroachment of the minimum approach distance, and the company fought the citation claiming unpreventable employee misconduct.

An administrative law judge upheld the citation, but a split Commission vacated it with Chairperson Cynthia Attwood dissenting.

The commissioners who vacated the citation felt OSHA didn’t establish MasTec had knowledge of the violation since Bilodeau, the supervisor, wouldn’t have been able to see T.M.’s unsafe work from the ground, whether he was sitting in his truck or standing nearby under the bucket.

Attwood, however, felt MasTec’s supervisor “failed to exercise reasonable diligence in supervising the linemen’s work, specifically the multiple missteps that culminated in the violative condition and were readily observable at several points.”

Because of the lack of supervision, the company failed to prove unpreventable employee misconduct and the citation should be upheld, Attwood wrote in her dissent.

SHARPEN YOUR JUDGMENT

This feature provides a framework for decision making that helps keep you and your company out of trouble. It describes a recent legal conflict and lets you judge the outcome.

■ WAS CHEMICAL RELEASE REALLY AN EMERGENCY?

“Our response to that ammonia release was perfect!” Safety Manager Pete Travers said.

“I know, but OSHA is still citing us,” Attorney John Jenkins said. “So let’s go over this again.”

Didn’t wear SCBA

“A valve for the anhydrous ammonia system was overpressurized, causing ammonia to be diverted into an underground sump,” Pete explained. “But the sump can only hold so much, and some of the gas was vented. It’s not ideal, but it was designed to do that, and it’s better than a burst pipe.

“Unfortunately, the wind pushed the gas directly toward the front gate where it made two security guards pretty sick,” Pete continued. “Someone called 9-1-1 for them while our rovers – employees trained to take care of these situations – responded to the valve.

“The rovers didn’t know how much ammonia released, but they could see there was no big cloud, and they paid attention to the windsock in the area to be sure they were on the safe side of the release,” Pete said. “So they approached the area, assessed the situation and called for the valve to be closed remotely, which effectively sealed the release.”

“They didn’t wear self-contained breathing apparatus?” John asked.

“Right, but there was no need to under the circumstances,” Pete said.

“If there was no need for them, then we can fight this,” said John.

The company fought the citation. Did it win?

■ *Make your decision, then please turn to Page 6 for the ruling.*

SAFETY COMPLIANCE *Alert*

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TRANSPORTATION

Board's Top 10 focuses on highway safety

■ MOST WANTED ZEROES IN ON SPEEDING, OTHER DRIVING ISSUES

Five out of the 10 items listed on the National Transportation Safety Board's 2021-22 Most Wanted List are again tied to highway safety, with speeding, impaired driving and distracted driving among the most notable issues addressed.

Speeding

There were 9,378 fatalities from speeding-related crashes in 2018, according to the NTSB.

More often than not, speeding is defined as exceeding a speed limit, but it can also mean driving too fast for road conditions while maintaining the speed limit.

The NTSB feels speed-limiters on large trucks, automated enforcement, speed analysis tools and education campaigns are underused tools that should see more use in addressing this safety issue.

Impaired driving

In 2019 there were 10,142 deaths from crashes involving drivers with

blood alcohol levels of 0.08% or higher, or 28% of all traffic fatalities that year.

Alcohol-impaired drivers were behind one in four fatalities in 2019, but drugs also factor into the problem, with state laws allowing the use of recreational and medicinal marijuana further complicating matters, according to the NTSB.

Unlike alcohol impairment, there's no way of knowing how extensive the drug-impaired driving problem is since there are no standardized drug-testing protocols, something the NTSB says needs to be developed.

Distracted driving

There were 3,142 people killed in crashes involving distracted drivers in 2019.

Crash data and research indicate devices such as cell phones and tablets are among the greatest contributors to driver distraction.

Some states made progress in addressing the problem, but none have implemented NTSB's recommendation for a ban on use of all personal electronic devices while driving.

ENVIRONMENTAL

EPA wants to keep workers safe from new chemicals

The U.S. Environmental Protection Agency (EPA) announced it is currently evaluating its policies and regulations under the Toxic Substances Control Act (TSCA) to ensure workers are safe when using new chemicals.

EPA identified several instances where the agency could align its approach more with statutory requirements and Biden administration executive orders for making determinations and managing risks associated with new chemicals.

Going forward, the agency "intends to ensure necessary protections for workers identified in its review of new chemicals through regulatory means."

This means in situations where

the agency identifies a potential unreasonable risk to workers that could be addressed with PPE and hazard communication, it will no longer assume workers are adequately protected by OSHA standards and updated Safety Data Sheets.

Absence of safeguards 'foreseen'

Instead, the absence of worker safeguards will be viewed as "reasonably foreseen" and the agency will mandate necessary protections as appropriate.

Further, the agency will stop issuing determinations of "not likely to present an unreasonable risk" based on proposed significant new use rules (SNURs).

TRENDS TO WATCH

Watch what's happening in various states. Some actions indicate trends.

■ STATE COVID RULES LIFTED, BUT ARE THEY REALLY?

Beginning March 19, 2021, employers in **Connecticut** will no longer be required to follow the state's Safe Workplace Rules for Essential Businesses issued for the COVID-19 pandemic.

The state's Department of Economic and Community Development issued new recommendations in its reopening guidance, encouraging businesses to continue following the rules as best practices.

However, the new guidance continues to require employers to follow CDC cleaning and disinfecting protocols and encourages reporting of potential violations of the guidance to the state hotline, according to law firm Jackson Lewis.

There is no mention of any enforcement mechanisms that may be in place, the law firm states.

■ NEW LAW CLARIFIES EMPLOYEE CLASSIFICATION

West Virginia Governor Jim Justice signed a bill March 23 that provides considerations regarding employee classification.

SB 272 requires someone classified as a contractor to acknowledge they:

- have a written contract confirming they know they are providing services as a contractor
- will not be treated as an employee
- will not be entitled to workers' compensation or unemployment benefits, and
- are responsible for the majority of supplies and other variable expenses incurred while performing contracted services.

Some other criteria involving control over where work is done and the ability to hire employees are also required.

The law is effective June 9.

Roundup of most recent OSHA citations

Go to www.SafetyComplianceAlert.com/fine for more OSHA fines and injury settlements.

Auto shop fined \$7K after jack failure kills worker

OSHA cited a North Carolina automotive repair shop after an employee was crushed to death while working under a motor home.

The jack propping up the motor home failed while the employee was working underneath it and pinned him between the motor home and the mechanic's creeper, crushing him to death.

Fine: \$7,000

Company: Fleet Truck Service, Charlotte, NC

Business: General automotive repair

Reasons for fine:

Three serious violations for failure to:

- legibly mark jack load rating in prominent location on jack by casting, stamping or other suitable means
- crib, block or secure jack's load after load was raised
- inspect jack for constant or intermittent use at one locality once every six months

Employees working in trench with standing water

OSHA cited an Oklahoma contractor after inspectors found employees working in a trench with standing water.

The workers, who were installing water lines in two different trenches as part of a street widening project, weren't wearing hard hats and had no appropriate means of escape in the event of a cave in or other emergency.

This contractor was cited three times in 2017 for similar violations, leading to multiple citations for repeat violations in the recent case, according to a Department of Labor news release.

Fine: \$146,128

Company: Cherokee Pride Construction, Sapulpa, OK

Business: Water and sewer

line construction

Reasons for fine:

One willful violation for failure to:

- ensure employees wore protective helmets while working in trench

Four repeat violations for failure to:

- provide safe means of egress from trench
- protect employees from hazards posed by trench with accumulated water
- protect employees from excavated materials that could fall back into trench
- ensure ladder side rails extended 3 feet above upper landing area

Three serious violations for failure to:

- train employees in recognition and avoidance of unsafe conditions
- ensure ladders were used only on stable and level surfaces
- withdraw defective ladders from service

One other-than serious violation for failure to:

- provide injury and illness logs within four hours of request

Restaurant fails to comply with state COVID orders

Oregon OSHA fined a restaurant for violating the state's public health order against indoor dining during the COVID-19 pandemic.

The business remained open despite knowing it was violating the order, which limited the capacity for indoor dining to zero in an extreme risk county.

In carrying out the investigation, two inspectors had to face a group of people who blocked the restaurant's entrance and ordered them to leave, according to KEZI 9 News.

Fine: \$17,800

Company: Little Brown Hen Café, Florence, OR

Business: Restaurant

One willful violation for failing to:

- comply with public health orders limiting capacity for indoor dining exposing employees to COVID-19

Note: The inspection was carried out despite several people, one with a firearm, blocking the entrance.

WORKERS' COMP DECISIONS

Can worker with benefits collect more for disability?

A sanitation worker received benefits for his injuries, but later claimed a permanent partial disability. Can he collect?

What happened: The worker was collecting trash when the sanitation truck struck a tree causing a branch to come down on top of him. He received benefits for various injuries, but later claimed permanent partial disability of his right arm.

Company's reaction: You returned to work with no loss of earnings, so you're not getting more benefits.

Decision: He could collect. The court found he hadn't received benefits for the permanent injury that was incurred at the same time as the other injuries, so he was entitled to more benefits.

Cite: *Matter of Cosides v. Town of Oyster Bay Sanitation*, NY Court of Appeals, No. 529772, 7/2/20.

Slipped and fell while running errand: Benefits?

A home health attendant slipped and fell while running an errand with her client. Can she collect?

What happened: During a daily walk with her client, the attendant stopped at her doctor's office to get paperwork required by her employer and to schedule an appointment for her client. On her way out, she slipped and fell on the wheelchair ramp, severely injuring herself and her client.

Company's reaction: The incident isn't work-related.

Decision: She could collect. All of the activities she was engaged in at the time of the incident were work-related, according to the court.

Cite: *Matter of Sharipova v. BNV Home Care Agency*, NY Court of Appeals, No. 530614, 2/4/21.

REAL PROBLEMS, REAL SOLUTIONS

Building employee engagement – today!

If you're like most safety managers, you've probably been in a situation where you've been tasked with implementing either new training, a new management system or something else new with safety.

One of the most important parts of a safety management program is employee engagement – it's one of the linchpins of making a safety program work.

How do you get employees involved with safety?

You can do this today

One method I've used is asking employees to take part in Job Safety Analyses (JSAs). It's something that you can do today.

JSAs can be hard to do. There's a lot of work involved.

You have to break a job down into a sequence of steps, look for potential hazards and then recommend actions to reduce risk.

If you break the job into too many tasks, you'll never get the job done. If you list too few steps, you risk missing hazards.

Employees who actually perform the tasks can help develop JSAs with that have the right amount of details.

So you have to gain employees' trust so they want to participate in creating JSAs.

'How can I help?'

Building employee trust depends on how you frame the task of creating JSAs.

The employees need to see the benefit in it for them.

"How can I help you do your job better?" is a good question to ask.

Good employees are always concerned about doing their jobs better.

The object is to see the job from the employees' perspectives.

You'll see how a job is actually done in the field, not just how you think it's done. You'll learn a lot.

For the employees, the most important part is that you're willing to go through the process with them.

Learning about how they actually

do their jobs, uncovering the hazards they face and finding ways to alleviate risk will build trust.

The result: You have JSAs built by workers, you've gained their trust and your employees are more engaged in safety.

(From a presentation by Colin Brown, Professional and Organizational Manager, Board of Certified Safety Professionals, Indianapolis, at the National Safety Council's Virtual Congress 202One.)

Memorial Wall: How we say 'never again'

Not too long ago, we had a very tough year at our company.

We had two employee deaths in the course of one year.

In one incident, an employee was removing a pole from a truck, touched a main line and was electrocuted.

In the other case, a worker was working on a water line that had become pressurized. He took a cap off and was in the line of fire.

Tangible reminder

As a result, we created a Memorial Wall in memory of those who died on the job at our company.

It's something that's tangible – you can touch it.

It's portable, so we take it to all of our headquarters and have a ceremony.

I'll never forget one time, three girls, the daughters of one worker who died, came up to the wall. One of the girls etched her father's name on a piece of paper. It was an opportunity for her to connect with dad one more time.

The Wall has a lot of impact. We didn't leave any space for additional names. That's because we've made a commitment to never let another employee death on the job happen again.

(Adapted from a presentation by Dan Pfeffer, Co-chair of Culture Team, Consumers Energy, Jackson, MI, at the NSC Virtual Congress 202One)

TRAINING TIPS

Helping employees deal with workplace stress

Being a truck driver or working in a busy warehouse or manufacturing plant can be extremely stressful for employees.

All of these workplaces can involve tight deadlines and often require an intense amount of focus, which can lead to workplace stress.

And workplace stress can take its toll on employees' mental and physical health, according to the Washington State Department of Labor & Industries.

Companies can reduce workplace stress by including stress management and training in their safety programs.

Things to cover include:

- eating healthy and staying hydrated
- making sure to keep a healthy work/family life balance
- getting enough sleep
- getting a sufficient amount of exercise
- the importance of regular medical exams, and
- learning methods to control stress such as meditation.

More info can be found in the "Stress Less, Feel Better" post of L&I's Keep Trucking Safe blog.

Lesson learned from fatal fire at packaging plant

A fire at a North Carolina packaging plant claimed the lives of two workers and resulted in \$118,000 in OSHA fines.

The heat gun one worker was using fell into a bucket of resin, causing the fire.

Fire hazards are a concern at many workplaces, and it's important workers are trained how to properly handle flammable materials and what to do if a fire does break out.

RECORDKEEPING

OSHA to cease enforcing 'double reporting' requirement

In a new interpretation letter, OSHA has removed its requirement for "double reporting" a fatality that occurs immediately after a worker hospitalization.

When the COVID-19 pandemic began, OSHA started issuing citations if an employer failed to report cases involving an admission to a hospital followed by a fatality, but a recently published interpretation letter indicates that has changed.

OSHA's area offices took the position that a second call to OSHA was required in the case of a fatality even if the employer already notified the agency of an injury requiring a hospitalization within the mandated 24-hour notification period.

This led to some employers being hit with proposed penalties of up to \$9,639, according to law firm Constangy Brooks Smith & Prophete.

The interpretation letter, which is dated Jan. 8, says that once OSHA has been advised of a case serious enough to require a hospitalization, "the agency is already in a position to seek information about the conditions that led to the admission and to decide whether an inspection is needed."

In other words, if OSHA is advised of the hospital admission, failure to

make a second call when the employee dies doesn't impede its ability to conduct an inspection.

4-hour rule still stands

However, the law firm reports OSHA hasn't changed its stance that an employer must produce OSHA 300 logs and summary forms within four business hours of a request.

That's something the agency had been more lax about in the past, typically giving employers a few days to produce the records, but has cracked down on since the start of the pandemic.

DOL boss wants more analysis on COVID ETS

President Joe Biden gave OSHA until March 15 to come up with an ETS addressing the coronavirus, but gave the agency more time when that deadline came and went without a draft of the standard.

Now Marty Walsh, the new Secretary of Labor, issued a statement saying he has "reviewed the materials and determined that they should be updated to reflect the latest scientific

analysis of the state of the disease," according to the Wall Street Journal.

Walsh ordered a "rapid update" based on the latest Centers for Disease Control and Prevention (CDC) data and information on vaccinations and COVID-19 variants present in the U.S.

Owner pleads guilty to \$30K workers' comp scam

Jose Velasquez pleaded guilty March 30 to two counts of felony insurance fraud and had already paid full victim restitution in the amount of \$30,483 to his insurer, Wesco Insurance Company.

From March 1, 2015, through March 1, 2020, Velasquez, owner of Velasquez Gardening, systematically misrepresented the number of his employees and the total amount of his payroll.

This resulted in his underpaying insurance premiums by a total of \$30,483, according to a news release from the Ventura County District Attorney's Office.

Sentencing is set for April 28, 2021.

Velasquez faces a maximum sentence of six years in jail.

SHARPEN YOUR JUDGMENT – THE DECISION

(see case on Page 2)

Yes, the company won when the court vacated the citation.

Pete's company claimed the release was "controlled" – something more akin to when untrained workers can keep a liquid spill from turning into a real release by rolling a drum with a hole in it on its side.

OSHA argued it was "uncontrolled" and was a true emergency response under the HAZWOPER standard, requiring the rovers to wear SCBA since they didn't know the exact size of the release.

The court found the fact that some amount of ammonia was released into the air doesn't establish an uncontrolled release, and if that was the case then virtually every release

of a hazardous substance would require an emergency response, making the inclusion of that language in the standard meaningless.

■ ANALYSIS: WHEN IS IT OK NOT TO USE PPE?

Safety pros know PPE isn't always the answer. Other controls are preferred with PPE being a last resort.

Sometimes, PPE itself can be an added risk. For example, wearing a respirator or SCBA when it's not really needed can create an added risk for slips, trips and falls due to the limited vision it creates. Another example: Wearing work gloves while operating machinery with rotating parts can create risk because those parts could grab the glove and pull a worker's hand into the danger zone.

Cite: *Secretary of Labor v. Tampa Electric Co.*, Occupational Safety and Health Review Commission, No. 17-2144, 3/19/21. Dramatized for effect.

Government notices on workplace safety

Here's SCA's digest of key notices that appeared recently in the Federal Register (FR) or on OSHA's website concerning workplace safety issues. For the FR listings and other related links, go to [SafetyComplianceAlert.com/category/federal-activities](https://www.safetynewsalert.com/alert.com/category/federal-activities).

MINE SAFETY

An audit by the Department of Labor's Office of the Inspector General (OIG) found MSHA doesn't ensure that mine operators abate hazards by the deadlines set by the agency and grants abatement due dates that are too lengthy.

The OIG wanted to know if MSHA properly managed its process to issue, terminate, modify and vacate violations, so it analyzed more than 736,000 violations and reviewed inspection and supervisory reports from six MSHA districts.

According to the audit report, MSHA didn't do a good job managing this process, resulting in "significant weaknesses" including:

- Failure to timely verify operators' abated hazards. For more than 215,000 violations out of the 706,000 reviewed, the agency hadn't verified that operators corrected hazards until after the required due date.
- Giving longer than necessary violation abatement due dates and unjustified extensions. Long hazard abatement periods can expose miners to hazards for longer than necessary and can affect penalty assessments for operators, the report states.
- Failure of MSHA inspectors to write violations complying with Mine Act and MSHA handbook requirements. A lack of internal compliance controls resulted in thousands of non-compliant issued and modified violations, which could result in court challenges and inaccurate penalty assessments.

The OIG report made 10 recommendations for correcting these weaknesses, including providing refresher training to inspectors,

introducing new metrics and updating system controls.

FEDERAL OSHA

Douglas Parker, the current head of Cal/OSHA and former Deputy Assistant Secretary for Policy at MSHA under the Obama Administration, is President Joe Biden's nominee to head OSHA.

Before his Cal/OSHA stint, Parker was executive director of Worksafe, a nonprofit dedicated to protecting workers, according to a White House news release.

Safety experts were happy with the pick, according to Politico, finding that his track record in California for policing COVID-19 in the workplace spoke for itself.

Debbie Berkowitz, an adviser at OSHA under the Obama administration, pointed out to Politico that Cal/OSHA conducted "almost as much enforcement in one state in 2020 as the federal OSHA did altogether."

WHISTLEBLOWER

A New York-based barge company and several of its management officials have paid \$375,000 in restitution to the brother of one of two workers killed in a barge explosion off the coast of Texas.

Investigators were looking into the cause of the Oct. 20, 2017, explosion of the barge, which occurred off Port Aransas, TX, killing two Bouchard employees, including the whistleblower's brother, according to a Department of Labor news release.

The brother began cooperating with the investigation several days after his brother's death and was allegedly fired three months later on Jan. 31, 2018, with no reason provided for the termination, so he filed a whistleblower claim with OSHA.

Bouchard must also remove any reference to the termination from its files, provide a neutral reference if contacted by any prospective employer and train its managers and employees about workers' rights.

WHERE TO GET HELP

NEW VERSION OF PPE BURN RATE APP INTRODUCED

Having a hard time keeping track of your PPE inventory? The National Institute for Occupational Safety and Health has a recently updated app that will help.

The PPE Burn Rate Calculator was designed by the Centers for Disease Control and Prevention to help both healthcare and non-healthcare systems track their PPE inventory and estimate how long supplies will last.

Version 2 has more options for users to collect and view PPE data, and now has more capability to meet the needs of large companies and facilities with complex inventory tracking needs.

To download the tool or get more information, go to [cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/burn-calculator.html](https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/burn-calculator.html)

What safety pros say

Will most companies track employee COVID-19 vaccinations?



Source: Gartner Inc. survey of 227 HR leaders at large global organizations

However, the same poll reveals that 36% of participants plan to have employees self-report vaccination status. But those employers won't require proof.

Each issue of SCA contains an exclusive survey to give safety professionals insight into what their peers nationwide are thinking and doing.

WHAT WOULD YOU DO?

Here's a challenging scenario you could encounter. We've asked three of your peers what they'd do. How would you handle it?

Employee concerned about forklift driver suffering from COVID 'brain fog'

The Scenario

Manager Mike Kelly just wanted to go home for the day.

"Ken, what time does second shift have its first break?" he asked the day shift manufacturing supervisor.

"Four, I think," Ken replied. "Are you itching to leave already?"

"It's been a long day, I still have errands to run on my way home and yard work to do before it gets dark," Mike said. "So, yes, I'm itching to leave."

Before they could continue their conversation, second shift worker Jon Cormier approached.

"Mike, can I talk to you alone for a moment?" Jon asked.

'Takes longer to react to things'

"I feel bad for bringing this up, but I have some safety concerns about one of my co-workers," Jon

said after Ken left the room.

"Don't feel bad," said Mike. "You have every right to express your concerns."

"One of our forklift operators just came back to work after having COVID," Jon said. "He had it bad enough he was in the hospital for a while."

"He used to be a pretty energetic guy, but he always seems tired now," Jon continued. "And he's just slower now, if you know what I mean. Like he takes longer to react to things."

"So you think he's suffering 'brain fog' from COVID?" Mike asked.

"Yes," said Jon. "And I'm afraid he's going to get into an accident on that forklift. I've already seen him have one close call."

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

Reader Responses

1 Carl Nash, Plant Manager, DYWIDAG Systems International, Bolingbrook, IL

What Carl would do: Because of the close call, I would reassign him to a different position until his forklift driving could be re-evaluated.

Reason: You would have to be sure this practice is consistent with everyone.

2 Gordon Webb, Medical Director, LOHS, Alexandria, LA

What Gordon would do: Mike needs to talk to the questionable forklift operator. If Mike agrees there is a safety issue, then he should be removed from safety-sensitive duties and sent to an occupational medicine clinic for a fit-for-duty evaluation.

Reason: This background will help the provider perform a complete

evaluation directed at post-COVID Syndrome and safety issues.

3 Joseph Wickenhauser, Safety and Security Systems Leader, Wieland Group, Chicago

What Joseph would do: We ran into this same situation earlier this year. The safety of this team member and those that work around him were our primary concern, so I immediately had him escorted to our onsite medical facility for an evaluation. Our site doctor was the first to call it possible COVID "brain fog." He was sent out to his PCP for an evaluation, along with a communication describing the types of behaviors we were seeing. Our team member's PCP agreed with the diagnosis of our medical team and placed him on medical leave.

Reason: Important to note, in these types of situations, we don't let the team member drive home themselves.

OUTSIDE THE LINES

■ UNCLE SAM WANTS YOU ... TO HAVE A COMFY MASK

Masks have proven to be an effective way to help mitigate spread of COVID-19, but they can be a major pain to wear.

Foggy glasses, irritation where elastic straps fit around the ears and stifled breathing are a few of the complaints people make when wearing cloth masks.

The U.S. Department of Health and Human Services feels the "mask pain" – a term I just made up – just like the rest of us, so it has "put out the call for new mask designs that battle both discomfort and coronavirus-carrying droplets, with \$500,000 in prizes," according to the Fierce Biotech website.

NIOSH is helping with the endeavor, which will see inventors competing in a "Shark Tank"-style pitch competition."

Because why not?

Did you know ...

Review your severe weather emergency plan with workers



OSHA says **severe weather emergency procedures** should be **reviewed** to ensure workers are **prepared**.

Source: OSHA

Employers and workers may be required to deal with a weather emergency when it's least expected, so proper planning is necessary to respond effectively, OSHA says.

This feature in each issue of SCA charts trends in national workplace safety and health to help safety professionals perform their jobs.