

November 15, 2021

WHAT'S INSIDE

- 2 Sharpen Your Judgment**
Safety-conscious worker dead after ignoring rules?
- 3 What's Coming**
OK to be high on the job in New York?
- 4 Who Got Fined – And Why**
Worker killed in fall, harness wasn't tethered
- 5 What's Worked for Other Companies**
Investigations: Avoiding the 'blame game'
- 6 Safety Regs Update**
OSHA begins work on heat hazard rule, requests information
- 8 Answers to Tough Questions**
Clearing up confusion over what is valid COVID-19 documentation

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.

OSHA's top 10 violations for 2021: COVID-19's effects

■ Which standard has more violations than usual?

The COVID-19 pandemic has changed many things, and that includes the top 10 OSHA violations.

At the National Safety Council's Congress and Expo, OSHA Director of Enforcement, Patrick Kapust, provided the 2021 list and some details on the exact violation inspectors are seeing and in which industries:

1. **Fall protection, general requirements**, 1926.501, 5,295 violations. This standard has been No. 1 for 11 years. Inspectors are finding unprotected sides, and failure to use fall protection on low-slope roofs, steep roofs, and around poles. Industries: Roofing,

framing and siding contractors, new single family housing construction, and commercial and institutional construction.

2. **Respiratory protection**, 1910.134, 2,527 violations. This general industry standard rises from No. 3 last year. Inspectors are finding failure to do medical evaluations, fit testing not being done before use, failure to have a written program, to train employees about wearing respirators properly, and employers aren't selecting the right type of respirator for the workplace. Industries: nursing care; medical

(Please see OSHA top 10 ... on Page 2)

PANDEMIC

Federal OSHA: 3 state plans failing to address COVID

Federal OSHA may step in to take over workplace safety regulation from three states – Arizona, South Carolina and Utah – for failing to properly address job-related COVID-19 exposure.

The three states failed to adopt rules at least as effective as federal OSHA's requiring employers to adopt certain COVID-related safety measures.

Failure to maintain approved plans

OSHA-approved plans are in place in 28 states and U.S. territories, and where no plan was approved, federal OSHA retains authority.

States with their own versions of OSHA "can assume responsibility for occupational safety if the government approves their plan for doing so and if the plan remains at least as effective

as federal enforcement," according to *The New York Times*.

However, if a state fails to maintain an effective plan, its authority to regulate workplace safety could be revoked entirely or in part – as in coverage of specific industries could be revoked.

Jim Frederick, acting director of OSHA, told *The New York Times* in a conference call that the three states' "continued refusal (to come into compliance) is a failure to maintain their state plan commitment to thousands of workers in their state."

Representatives from the three states said they feel their OSHA programs had at least proven as effective as the federal agency's, and didn't want to implement COVID-19 measures that would place an undue burden on employers.

NSC CONFERENCE

When safety is thrown a curve ball

When National Safety Council CEO Lorraine Martin thinks about the last 18 months and the world of occupational safety, an experience she had while in the ROTC comes to mind.

In opening remarks at the NSC's Safety Congress & Expo 2021, Martin told a story about ROTC officer training school before her junior year.

She traveled to Abilene, TX, but her luggage didn't ... at least not for the first three days she was there.

She had no uniform, no boots and none of her clothes, so for the first three days, she performed all her basic training exercises in civilian clothes.

First lesson in resilience

By the time graduation from training came around, Martin said she'd forgotten all about her temporarily missing luggage, but her commanding officer remembered.

He told Martin, "You were thrown quite a curve ball, but you handled it

well and you didn't let it derail you."

Martin says up until then, she didn't think "keeping calm and carrying on" was actually a valuable skill.

Safety pros need resilience more than ever, Martin said at the conference.

"We need resilient leaders because we still have some big safety threats," she said. "In the workplace, we continue to square off against COVID-19."

OSHA top 10

(continued from Page 1)

and surgical hospitals; stone cutting and manufacturing; assisted living facilities; and automotive paint, repair and maintenance. Many of these violations were due to the COVID-19 pandemic.

3. **Ladders**, 1926.1053, 2,026 violations. Violators were not using ladders for the purpose they were designed for, allowing employees to stand on the top step, using them on unstable or unlevel ground, and allowing employees to climb while carrying objects or loads that may cause a loss of balance. Industries: Roofing, framing and siding contractors; single family home construction; and residential remodeling.
4. **Scaffolding**, 1926.451, 1,948 violations. Violators were not: providing fall protection, preventing scaffolds from tipping, fully planking platforms, nor installing guard rails. Industries: Masonry, framing, roofing and siding contractors.
5. **Hazard communication**, 1910.1200, 1,947 violations. Violators didn't implement a written hazard communication program, failed to provide information and training to employees, didn't use labels properly, and didn't have safety data sheets readily available. Industries: Masonry and roofing contractors, commercial and institutional building construction, and machine shops. *For the rest of the list, search "OSHA top 10 2021" on our website.*

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.

SAFETY-CONSCIOUS WORKER DEAD AFTER IGNORING RULES?

Safety Manager Pete Travers was struggling through his emotions – anger to sadness then back to anger.

"I can't believe OSHA wants to cite us for this," he said.

"Well, they are," company attorney John Jenkins said.

"Phil worked here for a long time," Pete said. "I wonder every day if there was something else I could have done, but he ignored all of our safety protocols in that incident, and that's what got him killed."

Failed to use straps

"Let's go through it again," John said.

"Phil was an experienced truck driver – he'd been with us for a decade – and he was actively involved in our safety program," Pete said.

"You look up 'employee engagement' and you'd see Phil's picture," Pete explained. "He helped train new employees, the whole nine yards.

"Why he didn't secure that load of cardboard bales is beyond me," said Pete. "Each one weighed 1,500 pounds and they were double stacked inside the trailer.

"That's why we require drivers to use straps – which are readily accessible." Pete added. "Those bales can shift and fall out on you when you open the trailer doors, which is what happened to Phil."

"We can fight this," John said. "It's an obvious case of unpreventable employee misconduct."

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

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

SAFETY COMPLIANCE *Alert*

EDITOR-IN-CHIEF: MERRIELL MOYER
M MOYER@PBP.COM
MANAGING EDITOR: FRED HOSIER
PRODUCTION EDITOR: P.J. FRONZEO
EDITORIAL DIRECTOR: CURT BROWN

Safety Compliance Alert (ISSN 1077-9787), November 15, 2021, Vol. 28 No. 630, is published semi-monthly except once in December (23 times a year).

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal or other expert assistance is required, the services of a competent professional should be sought. — From a declaration of principles jointly adopted by a committee of the American Bar Association and a committee of publishers.

Copyright © 2021 Safety | News Alert. Please respect our copyright: Reproduction of this material is prohibited without prior permission. All rights reserved in all countries.

DRUG TESTING

OK to be high on the job in New York?

■ NO MORE WORKPLACE MARIJUANA TESTING IN THE EMPIRE STATE

Employer drug testing for marijuana use in New York is no longer permitted under most circumstances, according to the state's new guidance.

The Marijuana Regulation and Taxation Act (MRTA) has taken effect, legalizing recreational marijuana use and possession for adults who are 21 and older, effective March 31, 2021.

It also amended the state's legal activities law, prohibiting employers from refusing to hire, employ, discharge or discriminate against anyone who uses cannabis lawfully while off-duty, off-premises and not using employer equipment or property.

When action can be taken

Under the MRTA, drug testing for marijuana isn't permitted except in very limited circumstances, such as if the test is required by law, according to law firm Jackson Lewis.

Drug test results can't serve as the basis for proving an employee was impaired by marijuana. Nor is the

smell of marijuana alone adequate proof of "articulable symptoms of impairment."

Employers can take employment actions regarding cannabis if an employee exhibits those specific articulable symptoms that decrease or lessen the employee's performance of their duties or interferes with the employer's obligation to provide a safe workplace.

Articulable symptoms

If an employee is impaired by marijuana while on the job, the employer can take action as long as the employee exhibits symptoms of impairment.

The tricky part is that "there is no dispositive and complete list of symptoms of impairment," according to the guidance document.

The state says the symptoms are "objectively observable indications that the employee's performance of the duties of their position are decreased."

An example provided by the state is an equipment operator who is running heavy machinery "in an unsafe and reckless manner."

SETTLEMENT

Foundry corrects 60 violations, pays \$276K OSHA fine

A New York-based iron foundry agreed Oct. 14 to correct 60 cited violations and pay \$276,189 in fines in a settlement with OSHA.

Frazer & Jones Co. Inc. of Syracuse also agreed to use enhanced corrective measures in addressing the hazards OSHA found in its facility.

According to a Department of Labor news release, the company was cited in 2019 after inspectors found:

- employee exposure to crystalline silica, silica dust and combustible dust
- inadequate respiratory protection
- fall, struck-by and caught-between hazards
- unsafe walking surfaces
- poor safeguards for confined spaces

- inaccessible fire extinguishers
- impeded exit routes
- ineffective pest removal, and
- build-up of bird feces on equipment.

Problems to address

Enhanced abatement measures the company agreed to take include:

- semi-annual inspections by a safety consultant
- addressing the consultant's recommendations and sharing them with the safety committee and corporate board of directors
- putting a system in place to address employee complaints, and
- having a ventilation consultant evaluate the dust control system for an overhaul.

TRENDS TO WATCH

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

■ STATE RELEASES PANDEMIC COMPLIANCE DATA

On Oct. 13, Minnesota OSHA released its compliance data for the period between March 1, 2020 – the start of the pandemic – and June 30, 2021.

The state agency received 23,958 email and phone inquiries during that period, which is a 100% increase over the previous year.

According to its *Safety Lines* newsletter, the agency also:

- received complaints 2,121 non-formal complaints and 396 formal complaints, with 176 of those related to COVID-19, an increase of about 430 over the previous year
- conducted 1,530 inspections, with 217 being COVID-19 related
- issued 2,200 citations, 173 of those issued on inspections with a COVID-19 component and 58 being general-duty citations, and
- fielded 547 intakes through its Discrimination Team, which resulted in 125 cases that are being pursued, 95 of which designated as having a COVID-19 component.

■ NO REIMBURSEMENT FOR MEDICAL MARIJUANA

The Minnesota Supreme Court, in two separate rulings, found that workers' compensation payers don't have to reimburse for medical marijuana because the drug is illegal under federal law.

Rulings in *Musta v. Mendota Heights Dental Center & Hartford Insurance Group* and *Bierbach v. Digger's Polaris and State Auto/Unified Fire & Casualty Group* reversed lower court decisions finding reimbursement for medical marijuana was not illegal.

One judge dissented, arguing both decisions overextended the federal law's preemptive reach.

Roundup of most recent OSHA citations

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

Worker killed in fall, harness wasn't tethered

OSHA cited a New York scaffolding contractor after a worker fell to his death because his fall arrest harness wasn't tethered.

The 21-year-old worker was installing scaffolding on a seven-story building in Brooklyn when he fell almost 50 feet to the ground below.

Fine: \$300,370

Company: Everest Scaffolding Inc., Bronx, NY

Business: Specialty trade contractors
Reasons for fine:

Two willful violations for failure to:

- ensure employees erecting scaffolding were using fall arrest PPE properly
- provide training on fall hazards to employees erecting scaffolding

Two serious violations for failure to:

- ensure employees anchored fall arrest PPE to anchorage capable of supporting 5,000 pounds or more
- inspect fall arrest PPE prior to each use

Failure to provide proper machine guards: \$558K fine

OSHA cited a Texas bath and shower manufacturer after an inspection revealed multiple machine guarding and other safety violations.

The November 2020 inspection found the company failed to use required machine guards and to provide employees with fall protection.

This led to multiple willful and repeat violations across two individual citations.

Fine: \$502,050 (under the first citation); \$56,771 (under the second citation)

Company: Clarke Products Inc., Waco, TX

Business: Plastic plumbing fixture manufacturing

Reasons for fine:

Two willful violations for failure to:

- guard machine points of operation
- guard non-working portions of bandsaw

15 repeat violations, including failure to:

- keep 3 feet of clear space around storage of combustibles
- ensure pedestal fans in spraying areas were explosion-proof
- guard all belts, pulleys, gears, shafts and moving parts

Five serious violations, including failure to:

- ensure electrical equipment was firmly mounted
- close unused openings in electrical boxes

Employee falls while lowering himself into pit

A Wisconsin water technology facility was cited by OSHA when an employee was injured in a fall as he was lowering himself into a water test pit.

The employee was lowering himself into the nearly 30-foot deep pit when the guardrail loosened, causing him to fall and strike his head on a support beam.

Fine: \$234,054

Company: Xylem Inc., Pewaukee, WI

Business: Industrial valve manufacturing

Reasons for fine:

One willful violation for failure to:

- ensure employees working 4 feet or more above dangerous equipment were protected from falling

Nine serious violations, including failure to:

- ensure employees on walking-working surfaces with unprotected edge 4 feet or more above lower level were protected from falling
- develop procedures for safe permit entry operations
- ensure employees used safe means of access to and from walking-working surfaces
- provide an attendant outside the permit space during entry operations
- prepare entry permits

WORKERS' COMP DECISIONS

Can agreement prevent worker from collecting?

A truck driver injured in another state wants to file a claim, but her employer says she can't because of a previous agreement she signed. Can she collect?

What happened: The driver was injured on the job while in a different state than her employer's headquarters. Despite an agreement she signed saying all claims would be handled in her employer's home state, she filed a claim in the state where she was injured.

Company's reaction: You signed an agreement, so you can't collect.

Decision: She could collect. The court stated that in most circumstances, a worker can't sign away their right to comp benefits, making the agreement void.

Cite: *Sellers v. Venture Express*, AL Court of Appeals, No. 2190165, 2/12/21.

Injured worker concealed the truth: Can he collect?

An injured worker concealed he was a firefighter while collecting benefits. Can he continue to collect?

What happened: The worker was collecting benefits for a neck injury sustained during his 30 years as a steamfitter. During several exams with different doctors, he stated he didn't work or engage in physical activity.

Company's reaction: We know you've been working as a firefighter.

Decision: He couldn't continue to collect. However, the court said his actions weren't so egregious as to disqualify him from future benefits.

Cite: *Matter of Dunleavy v. Federated Fire Protection*, NY Court of Appeals, No. 531679, 3/11/21.

REAL PROBLEMS, REAL SOLUTIONS

Investigations: Avoiding the 'blame game'

Sometimes, when safety people go out on a plant floor, other employees go the other way.

Why? Because it's often perceived that safety people find things that are wrong and then fix them.

The result: resentment and fear.

Addiction to blame often undermines safety programs and employee engagement.

Blame often arises from Root Cause Analyses (RCA), performed after an incident, such as an injury or death.

10 ways to improve RCAs

How can companies perform RCAs without playing the "blame game," that has a negative impact on employee engagement?

Here are 10 steps to improve RCAs:

- 1. Avoid labels:** Be careful of using phrases like, "the worker had a poor attitude." Instead, objectively describe a specific behavior that led to an incident. Accurately describing the behavior will help to successfully control it.
- 2. Give specific instructions:** Telling employees to "work safely" doesn't work as well as giving specific instructions. Example of a good instruction: "Put the key in your pocket after you lock out the machine to remove the risk of energy being activated by another worker."
- 3. Avoid the fault-finding mindset:** Look for the positive as well as the negative. Example: Identify solutions employees have come up with for safety problems. Spread those around as best practices and get employees to talk about techniques they've found to work more safely.
- 4. Set specific learning objectives:** Have training objectives and observable performance conditions that can be measured.
- 5. Commit to continuous improvement:** Use "plan, do, check, act." Each run through the cycle should bring you closer to your goals. Perform RCAs for near hits. Better near hit reporting means your number of near hits will go up short term, but that's a good thing.
- 6. Train employees about RCA:** Teach them about different RCA techniques using a mock incident. Employees with special safety roles should receive more specialized RCA training. Document the effectiveness of the training.
- 7. Track your progress,** including leading and lagging metrics. Tracking near hits is great, but make sure everyone understands how to interpret trends. Metrics should relate to issues that are a challenge for your company (e.g. overdue action items). Incorporate what you've tracked into a robust corrective action program.
- 8. Improve corrective action management:** Once you're identified root causes, it's time to develop good corrective actions. Every root cause should be addressed by a corrective action. If a RCA points to problems with an existing job safety analysis, be sure to include corrections in the JSA. The most effective corrective actions are those implemented at the design level.
- 9. Share responsibility for RCA:** Responsibility should be shared by team members to ensure you're receiving different perspectives. This helps keep your investigation system intact if some of the primary people move on. This includes having management buy-in. If management doesn't sign off on RCA, you may not have the authority you need to identify systemic issues.
- 10. Ensure employee engagement:** Without employee involvement, you won't find accurate root causes, and then you'll fail to take good corrective actions. Involve workers at all levels: supervisors, shop floor and office. Share progress on investigations and corrective actions. You can't maintain an incident investigation process by yourself. *(Adapted from a presentation by Phil Mole, EHS and Sustainability Expert, Velocity EHS, Chicago, at ASSP's Safety21 Conference)*

TRAINING TIPS

Press operator may have lived if LOTO was followed

A press operator's tragic death inside the machine he used on a daily basis illustrates why workers must remember to lock out equipment before servicing it.

A 39-year-old hay press operator was performing his usual job processing hay into high-density bales for shipping.

Near the end of his shift, the plant supervisor asked him and two other workers to prepare the machine for maintenance.

The operator was responsible for locking out the equipment, but instead, he crawled into the machine on its conveyor.

As he pushed a hay bale along the conveyor, he triggered a scale that caused the machine's guillotine blade to drop at a certain weight, resulting in near decapitation.

Washington State's Department of Labor & Industries found the incident could have been avoided if lockout/tagout protocols had been followed.

Make sure equipment can safely handle heavy loads

Math isn't everyone's strong suit, but when it comes to calculating load weights for cranes or forklifts, the operator needs to know for sure if the equipment can handle the lift safely.

Failure to know if the equipment can handle the load can result in tragedy, so workers who don't trust their math skills should consult with a supervisor before going forward.

For example, OSHA recently cited a Texas contractor working on I-10 near Beaumont after a crane operator failed to determine the correct weight of a load.

As the load was being lifted, the boom fell off the crane and struck a passing car, killing both occupants.

HOT ENVIRONMENTS

OSHA begins work on heat hazard rule, requests information

After announcing its intentions earlier this year, OSHA under the Biden administration officially starts work on a regulation to protect workers, outdoors and indoors, from heat hazards.

OSHA will publish an Advance Notice of Proposed Rulemaking (ANPRM) for Heat Injury and Illness Prevention in Outdoor and Indoor work Settings in the Oct. 27, 2021, *Federal Register*.

At this time, OSHA doesn't have a specific standard for hazardous heat conditions. The ANPRM begins the process to establish one. (OSHA has used the General Duty Clause to issue citations for this in the past.)

The ANPRM starts a comment period to gather expertise and perspectives on the subject. The comment period will last for 60 days after Oct. 27.

Agency looking for comment

- OSHA is requesting comments on:
- employee heat exposure
 - contributing factors to heat stress in the workplace
 - heat illness prevention programs
 - engineering and administrative controls
 - PPE

- acclimatization
- monitoring
- planning and responding to heat-related illness emergencies
- worker training and engagement, and
- costs and benefits, including impact on small businesses.

For more information, go to [regulations.gov](https://www.regulations.gov)

choose between a strong economy and good, safe jobs" when listening to and learning from stakeholders can ensure both.

Law firm Jackson Lewis told *Government Executive* that Parker's confirmation as the head of OSHA would signal "significant regulatory and enforcement changes" at the agency.

Parker new head of OSHA: What it means

Doug Parker, the Biden Administration's pick to head OSHA, has received confirmation by Congress to assume the role of Assistant Secretary of the Department of Labor in charge of the agency.

Parker, who was most recently employed as the head of Cal/OSHA, was granted the position Oct. 25 with a 50-41 vote.

At a confirmation hearing in May, Parker said that as OSHA's chief, he'd continue doing what he did in his other government roles, which was maintaining a dialogue with stakeholders, according to *Government Executive*.

Parker said there was no reason "to

Automatic braking systems laws considered

The U.S. Department of Transportation recently announced new laws are being considered requiring automatic emergency braking (AEB) systems in commercial vehicles.

AEB systems are a type of collision avoidance device that applies brakes instead of the driver and determines how much force to use when doing so.

Critics of current versions of AEB systems feel there's a danger they could cause crashes by suddenly stopping the vehicle over phantom objects in the roadway without any involvement from the driver, according to law firm Searcy Denney Scarola Barnhart & Shipley.

SHARPEN YOUR JUDGMENT – THE DECISION

(see case on Page 2)

This situation isn't based on a court case, so we're not sure if the company was cited or not, but there are still some valuable lessons to learn here.

Investigators found the employer did provide straps for drivers to use to keep the bales from falling over and becoming a hazard, but drivers failed to use them.

In this incident, the trailer was also parked on uneven ground when the driver opened the doors, and that may have led to the load becoming even more unstabilized.

The investigation report also pointed to the fact that employers are responsible for ensuring that all loads transported on trucks and trailers must be properly secured and distributed.

There are both state and federal regulations that apply to that requirement.

■ ANALYSIS: MAKE SURE SAFETY EQUIPMENT IS USED

While employees may be provided with safety equipment to use to mitigate or eliminate hazards, the employer is also responsible for ensuring the use of that equipment.

This incident, for example, may have been completely avoided if a supervisor would have checked the load before the driver left the premises.

Ideally, the supervisor would have noticed the bales weren't strapped down and reminded the driver to use the provided equipment before he drove away.

Cite: *Washington State Fatality Assessment & Control Evaluation Program Report No. 71-207-2021*, Aug. 27, 2021. 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/category/federal-activities).

NEW PROGRAM

OSHA is starting a regional emphasis program (REP) in the Midwest targeting hazardous substances – such as asbestos, formaldehyde and cadmium – which can lead to cancer and other long-term serious health diagnoses years after exposure.

The agency will focus these inspections on employers with documented employee exposure through previous agency inspections and at companies in similar industries.

This differs from typical programs because OSHA found usual injury and illness data doesn't adequately identify exposure since symptoms can occur years after exposure, according to a Department of Labor news release.

Following a three-month outreach that began on Oct. 1, OSHA will begin inspecting select manufacturing industries under the REP in Kansas, Missouri and Nebraska.

LAWSUIT

A Texas luxury car dealer that allegedly retaliated against an employee who raised COVID-19 concerns is being sued by OSHA.

The employee was fired after warning co-workers about potential COVID-19 hazards in the workplace.

After learning that a co-worker at Austin-based Hi Tech Motorcars tested positive for the coronavirus, the employee requested management notify other employees immediately regarding their risk of exposure, according to a DOL news release.

When management didn't take any action, the employee sent a companywide email about the potential hazard.

Less than an hour later, the employee was fired.

OSHA found the employee had exercised their whistleblower rights and the termination was illegal, so it filed a lawsuit against the company seeking reinstatement, lost wages and benefits resulting from the termination, reimbursement for costs and expenses, compensatory damages, and exemplary or punitive damages.

HAZARDOUS MATERIALS

The Department of Transportation's Pipeline and Hazardous Material Safety Administration (PHMSA) is reviewing five industry and trade association petitions to update hazmat regs.

The five petitions deal with:

- new proper shipping names for lithium batteries (LBs) in cargo transport units and battery-powered equipment and vehicles. PHMSA's Emergency Response Guidebook includes separate emergency response guidelines for lithium-ion, lithium-metal and wet batteries, which can slow down a response.
- modifying the definition of "liquid." A redefinition would be based on the penetrometer test approved under United Nations modal regs.
- increasing the weight threshold for large LBs under the Materials of Trade above 66 pounds. Larger format LBs that can power a nighttime construction site must currently be transported as fully-regulated Class 9 hazmats, which entails strict packaging, handling and training requirements.
- making food-grade vinegar with 30% or less by weight acetic acid exempt from bulk shipment Special Permits, and
- lowering the minimum steel thickness threshold for reconditioning and reuse of steel drums. Hazmat packaging reconditioners asked for the change.

Info: [phmsa.dot.gov/hazmat/rulemakings/hazardous-materials-petitions](https://www.phmsa.dot.gov/hazmat/rulemakings/hazardous-materials-petitions)

WHERE TO GET HELP

NEW ONLINE COURSE ON RECOGNIZING IMPAIRMENT

A new one-hour eLearning course for training supervisors and safety professionals on recognizing and responding to impairment in the workplace is now available from the National Safety Council (NSC).

The course was tested before release with "real-world supervisors and safety professionals," and covers:

- the importance of recognizing and responding to impairment
- supervisor responsibilities when recognizing impairment
- common causes of impairment (alcohol, cannabis, fatigue, mental distress and more), and
- common signs and symptoms of impairment.

More information can be found at [nsc.org/impairmenttraining](https://www.nsc.org/impairmenttraining)

What safety pros say

Are employees satisfied with workplace safety now compared to earlier in the pandemic?

Satisfied in 2021

72%

2020

65%

2019

74%

Source: Gallup

Worker satisfaction with job safety took a hit in 2020 after ranking near the top of Gallup's list of job aspects since 1999. It has since rebounded to pre-pandemic levels.

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

ANSWERS TO TOUGH SAFETY QUESTIONS

Safety pros like you face questions every day on how to keep your employees safe. On this page, you'll get answers to real-life questions and situations you could encounter in either a "Management Scenario" or "Experts' Solutions."

EXPERTS' SOLUTIONS

Clearing up confusion over what is valid COVID-19 vaccination documentation

Q: Under federal OSHA, can a COVID-19 antibody test be used as documentation to prove an employee was vaccinated?

A: No. An employee must provide the required documentation – a copy of the record of immunization from a health care provider or pharmacy – for proof of vaccination, according to [saferfederalworkforce.gov](https://www.safefederalworkforce.gov).

Why? Presumably because of a recent study showing that unvaccinated individuals who recovered from COVID-19 are twice as likely to be re-infected with the virus as those who have been vaccinated, according to Lawrence Halprin of the law firm Keller and Heckman.

Consequences for failing to electronically submit forms?

Q: Can employers be fined if they fail to electronically submit OSHA 300 and 301 forms?

A: Yes, employers can be fined for this, according to James L. Curtis and other attorneys at law firm Seyfarth Shaw.

OSHA has cited employers that failed to upload their information ever since the institution of the electronic submission rule during the Obama administration.

The agency will also likely use the information to send out warning letters, conduct inspections and target employers who do properly record and submit their 300/301 forms, if they happen to have injury and illness rates above their industry average.

Seyfarth Shaw says another thing to be aware of is that the Injury Tracking Application data is also available online and is accessible to competitors, labor unions and employees, which could lead to more complaints filed with OSHA.

Can you ask about vaccination status in Texas?

Q: Can Texas employers request employee vaccination status even though there's an executive order against vaccine mandates?

A: Yes, when read literally the order doesn't explicitly prohibit employers from inquiring into vaccination status, according to Tiffany Cox Stacey and Christine Bestor Townsend, attorneys with law firm Ogletree Deakins.

The order states that employers cannot "compel receipt of a COVID-19 vaccine." So checking on vaccine status or even taking adverse employment action based on vaccine status isn't prohibited. An employer could argue its mandatory vaccine policy doesn't "compel receipt" of the vaccine since the employee could quit their job instead of getting vaccinated.

However, the executive order leaves a lot of unanswered questions that aren't likely to be answered until future legal challenges and government guidance come into play.

If you have a safety-related question, email it to Merriell Moyer at: mmoyer@pbp.com

OUTSIDE THE LINES

■ BE CAREFUL, THOSE ARE DESSERT SPRINKLES!

As a safety pro, you may have had to tell workers not to eat while handling hazardous chemicals – seems like a no-brainer, but some people just don't think, right?

But what about foods that already have the hazardous chemicals in them?

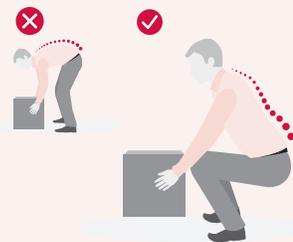
Take for example, a British bakery that's been forced to pull its best selling cookies because the U.S.-made sprinkles it used contain a coloring deemed harmful to humans for most purposes by regulators in the UK, according to NPR.

Red No. 3 can only be used in the UK on cocktail cherries or to decorate eggshells because studies show high doses cause cancer in lab animals.

That doesn't mean you shouldn't tell Dave not to eat while cleaning up that pesticide spill. Shame on you Dave, you know better.

Did you know ...

Lift with the legs not with the back



To **avoid injury**, OSHA says workers should **lift loads** with their **legs** not with their **backs**.

Source: OSHA

If a worker can't safely lift an object by themselves, assistance should be provided, whether in the form of a device like a dolly or cart, or with the aid of a co-worker.

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