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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 Editor-in-Chief Merriell Moyer.

## Is there a 'reasonable accommodation' for medical pot?

### ■ *Court allows user to pursue discrimination suit*

Whether an accommodation for a medical marijuana user is reasonable is a factual determination that should be decided on a case-by-case basis rather than a conclusion based on marijuana being illegal under federal law, the Supreme Court of New Hampshire said in a Jan. 14 decision.

The court reversed a lower court decision dismissing a lawsuit accusing an employer of firing a worker for requesting a reasonable accommodation for medical marijuana.

The former employee was suffering from Post-Traumatic Stress Disorder

(PTSD) and his doctor recommended he use marijuana to treat the issue.

### **No intent to use/possess at work**

He then enrolled in the state's medical marijuana program and submitted a written request for an exception from his employer's drug testing policy as a reasonable accommodation for his disability.

In the written request, the employee said he had no intention of using or possessing marijuana during work hours or on the company's premises.

His employer denied the request and later terminated him, according to

*(Please see Accommodation ... on Page 2)*

## INVESTIGATION

### **Fatality shows need to address situational awareness**

A recent fatal incident investigated by the National Transportation Safety Board illustrates the need to help workers focus on situational awareness.

On October 14, 2020, a Housatonic Railroad Company employee working as the roadway worker-in-charge (RWIC) of a group of track workers was struck and killed by a rail-mounted track excavator traveling on an out-of-service track in North Canaan, CT.

The RWIC was standing clear of the track when the track excavator operator moved the machine near the RWIC's location to discuss the measurement. After they talked, the operator moved the excavator forward.

Unknown to the operator, as he moved the machine forward, the RWIC began rolling up his measuring

tape while continuing to walk along the track, placing himself between a nearby switch panel and the excavator.

The clearance between the panel and the excavator gradually reduced to about 2 feet as the machine continued to move forward.

Eventually, the excavator's large rubber tire struck and killed the RWIC.

There was no evidence of fatigue or drug use by either worker, and co-workers described both men as being alert and attentive the day of the incident.

### **Company revises training program**

In addressing the incident, the company has since revised its training for RWICs to bring emphasis on being more situationally aware of close clearances when in the field.

### INSURANCE FRAUD

## Owners charged in \$1.7M comp scheme

The owners of a California-based chicken processing plant are in hot water after being accused of orchestrating a \$1.7 million workers' compensation fraud scheme.

Wei Wen Wu and Feng Wen Lam, the husband and wife ownership team of Golden Food Inc., are charged with 43 felony counts of insurance fraud, grand theft and conspiracy after allegedly underreporting almost \$4.5 million in payroll.

The couple are scheduled to appear in court on March 29.

### Fake tax docs found on computer

An investigation began after the department received a referral from the state's Compensation Insurance Fund (State Fund).

State Fund suspected the couple of fraud after comparing the payroll reported during annual audits with payroll reported to the Employment Development Department.

Investigators obtained search warrants for Golden Food's true

records and found fake tax reporting forms on the company's computer.

The records revealed that between 2015 and 2021, the company underreported its payroll to workers' compensation insurance carriers by \$4,489,390, resulting in a loss of \$1,681,138 in unpaid premiums to four insurance companies.

### Accommodation ...

(continued from Page 1)

Jennifer Mora of law firm Seyfarth Shaw.

The employee filed a discrimination suit against his employer for failing to make a reasonable accommodation for his disability, and the employer asked for the case to be dismissed because marijuana is illegal under federal law.

A trial court agreed with the employer and dismissed the case.

### State law doesn't exclude it

The employee argued on appeal that the trial court erred in its decision, which implies "an employer cannot be required to accommodate an employee's use of medical marijuana to treat a disability under state law."

Focusing on the text of the state's medical marijuana law, the Supreme Court agreed with the employee that the statute doesn't contain language excluding the use of medical marijuana as an accommodation.

The court said the status of an accommodation for medical marijuana as reasonable is something decided by the facts of each individual case, so it reversed the lower court decision.

Keep in mind that while technically this case applies only in New Hampshire, the state "joins a growing number of other jurisdictions that have found an employer might have to consider medical marijuana use as a reasonable accommodation," according to Seyfarth Shaw.

Arizona, Delaware, New Jersey, New York and Rhode Island are among those with similar protections.

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.

### INSPECTION MISHANDLED: DO VIOLATIONS STILL STAND?

"Hey, Pete!" company attorney John Jenkins called out.

Safety Manager Pete Travers was halfway down the dock and couldn't hear over forklift backup alarms and idling trucks – the warehouse crew was loading construction materials for a big project.

Pete looked up in time to see John gingerly making his way closer.

The attorney jumped every time a horn was sounded.

"We really need to get you out of the office more," said Pete.

### So upset he forgot his PPE

"We have an OSHA citation," John said. "Something about a roofing crew caught without fall PPE?"

"The supervisor of that crew told me an inspector showed up when he saw our employees on a roof without their fall safety equipment on," said Pete.

"Apparently, the supervisor was running late, and when he arrived he also saw they weren't wearing their gear," Pete explained.

"He climbed a ladder to reprimand them," said Pete. "But he was so upset that he forgot to put his fall PPE on first."

"That's when OSHA arrived and started asking them to take pictures and measurements," Pete explained.

"Whoa, hold on a second," John said. "The inspector made them do it? That's against OSHA's own guidelines. Further, this is also a clear case of unavoidable employee misconduct. We can fight this."

Pete's 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

### Feds roll out new traffic safety strategy

#### ■ U.S. DOT PLANS NEW APPROACH TO COMBAT RISE IN ROADWAY DEATHS

Safety pros in the transportation industry take note – the U.S. Department of Transportation (DOT) announced a National Roadway Safety Strategy (NRSS) to combat the rise in traffic fatalities.

The NRSS will use a Safe System Approach – a method that builds and reinforces multiple layers of protection – to both prevent crashes and minimize harm if a crash does occur.

This approach acknowledges human mistakes and vulnerability, and “designs a redundant system to protect everyone by preventing crashes and ensuring that if they do occur they do not result in serious injury or death,” the DOT states.

#### Goal = zero roadway fatalities

Transportation incidents remained the most frequent type of fatal workplace incident, even through the pandemic, with 1,778 fatalities accounting for 37.3% of all workplace fatalities in 2020, according to Bureau of Labor Statistics data.

To address the rise in fatal crashes, the NRSS will use a five-pronged model to address safety by making safer people, roads, vehicles and speeds, and through post-crash care.

This effort is being funded by the bipartisan infrastructure law with the NRSS being considered “the first step in working toward an ambitious long-term goal of reaching zero roadway fatalities.”

- The NRSS will see the DOT:
- working with states to build safer roadways through updates to the Manual on Uniform Traffic Control Devices, a Complete Streets Initiative to provide technical assistance to communities of all sizes, and speed limit setting
  - leveraging technology to improve the safety of motor vehicles, including rulemaking on automatic emergency braking, and
  - investing in road safety through a new \$6 billion Safe Streets and Roads for All program, hundreds of millions for behavioral research and interventions, and \$4 billion in additional funding for the Highway Safety Improvement Program.

## CRIMINAL CHARGES

### Owners to serve prison time for fatal explosion

The owners of Nebraska Railcar Cleaning Services (NRCS) were sentenced Jan. 14 for willful violations of federal safety standards resulting in an explosion that killed two workers.

Steven Braithwaite, president and owner of NRCS, will serve 30 months in prison for his role in the offenses, and Adam Braithwaite, the company’s vice president and co-owner, will serve one year and one day.

Each will pay \$100,000 in restitution, and NRCS and both Braithwaites must serve five years of probation and a \$21,000 fine.

The Braithwaites and NRCS pleaded guilty July 12, 2021, to:

- willful violations of federal worker safety standards that resulted in

two worker deaths

- violations of the Resource Conservation and Recovery Act (RCRA) involving hazardous waste
- endangerment to others
- submission of false documents to OSHA, and
- perjury.

#### Lied to OSHA about testing

The Braithwaites and NRCS failed to implement worker safety standards, mishandled hazardous wastes violating the RCRA and knowingly submitted false documents to OSHA during inspections as a cover up.

“Those decisions led to the deaths of two of their workers,” a Justice Department news release states.

## TRENDS TO WATCH

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

### ■ NEW MEDICAL CANNABIS ACT NOW IN EFFECT

The **Mississippi Medical Cannabis Act** was signed into law Feb. 2, permitting the use of medical cannabis to treat debilitating conditions such as Parkinson’s disease, muscular dystrophy and post-traumatic stress disorder.

This law was effective immediately upon Governor Tate Reeves’ signing, but medical marijuana won’t become available in the state for several months.

According to Kathryn Russo of law firm Jackson Lewis, employers:

- aren’t required to permit or accommodate the medical use of cannabis
- aren’t prohibited from taking adverse employment action against an individual as a result of their medical use of cannabis, regardless of their impairment or lack of impairment from the medical use of cannabis
- aren’t prohibited from establishing or enforcing a drug testing policy, and
- may discipline employees who use medical cannabis in the workplace or who work while under the influence of medical cannabis.

### ■ COVID PRESUMPTION EXTENDED TO 2023

**Minnesota’s COVID-19** presumption for frontline workers was extended through Jan. 13, 2023.

The law states that a COVID-19 infection is work-related unless an employer is able to prove the infection happened elsewhere.

The law reinstates presumptive eligibility for doctors, nurses, firefighters, paramedics, police officers, long-term care workers, home health workers and correctional officers.

## Roundup of most recent OSHA citations

### Worker dies under thousands of pounds of soil

An Alabama contractor was cited following an OSHA investigation into a fatal trench collapse that saw a worker die beneath thousands of pounds of soil.

Shortly after the employee entered to work on underground utility pipes, the trench collapsed around him.

“Research estimates that one cubic yard of soil weighs up to 3,000 lbs. – the weight of a small car – giving a worker buried in a trench little chance of survival.”

**Fine:** \$110,590

**Company:** Weaver Environmental Services Inc., doing business as WESCO, Huntsville, AL

**Business:** Water and sewer line structures construction

**Reasons for fine:**

*One willful violation for failure to:*

- protect employees working in trenches from cave-ins by using adequate protective systems

*Two serious violations for failure to:*

- provide support systems for sidewalks, pavements or appurtenant structures undermined during excavation
- inspect excavations, adjacent areas and protective systems after every rainstorm or other hazard-increasing occurrence

### Manufacturer gets \$216K fine for repeat hazards

OSHA fined a Milwaukee manufacturer for multiple repeat and serious violations involving putting workers at risk of machine and noise hazards.

The company was inspected twice in 2020 and was cited for similar violations. During a January 2021 follow-up inspection, inspectors found the hazards hadn't been abated.

**Fine:** \$216,307

**Company:** Tramont Manufacturing LLC, Milwaukee

**Business:** Metal tank manufacturing

**Reasons for fine:**

*Three repeat violations for failure to:*

- ensure employees used appropriate eye and face protection when required
- guard points of operation on machines
- put safety guards on machines with abrasive wheels

*Nine serious violations, including failure to:*

- clearly outline purpose and techniques to be used in energy control procedures
- conduct periodic inspections of energy control procedures
- ensure forklift operators were properly trained on forklift operations
- conduct frequent inspections of overhead cranes

### Court fined \$25K after interpreters die from COVID

Cal/OSHA fined the Los Angeles Superior Court more than \$25,000 for multiple COVID-19-related violations, which the court plans to appeal.

The state agency notified the court July 7 that it found at least three health and safety violations during an inspection of the Pasadena Courthouse, which is operated by the Superior Court system.

All three of the violations are related to safety measures put in place for the court's interpreters, according to *Pasadena Now*.

Two full-time interpreters and one contract interpreter died from COVID-19 in 2021.

**Fine:** \$25,250

**Company:** Superior Court of California, Los Angeles

**Business:** Court

**Reasons for fine:**

*Two serious violations for failure to:*

- implement an effective injury and illness prevention program, including lack of COVID-19 prevention training for interpreters
- ensure physical distancing in the interpreters' lounge

## WORKERS' COMP DECISIONS

### Worker was injured but no one saw it: Can he collect?

A worker fell through a scaffold when an unsecured plank shifted, but no one else witnessed the injury. Can he collect benefits?

**What happened:** A construction worker was injured when he fell about 6 feet after an unsecured plank on a scaffold shifted. No one else witnessed the incident.

**Company's reaction:** No one saw the incident, and you must be lying since the planks were nailed down.

**Decision:** He could collect. The court found the worker was a credible witness, unlike some of his co-workers who were accused of nailing down the planks shortly after the incident occurred.

**Cite:** *Dyszkiewicz v. City of NY*, NY Court of Appeals, No. 27495/17E, 5/6/21.

### Inhalation injury at work or pre-existing lung disease?

A worker with a history of lung issues suffers an inhalation injury at work. Can he get benefits?

**What happened:** The worker – who was already being treated for chronic obstructive pulmonary disease – was handling sodium hydrosulfite at work when he went into respiratory failure.

**Company's reaction:** You have a pre-existing condition which means this incident wasn't work-related.

**Decision:** He couldn't collect. Despite conflicting medical evidence, the court found the worker's respiratory failure was caused by aggravation of his pre-existing lung disease rather than a new, work-related injury.

**Cite:** *Hamilton v. Logan Water Care*, W. VA Supreme Court, No. 20-0047, 5/20/21.

## REAL PROBLEMS, REAL SOLUTIONS

## 10 principles deliver safety results (part 2)

At the National Safety Council's fall 2021 conference, Brian Fielkow, CEO of GTI Group, discussed 10 principles he used to help deliver safety results he's proud of at his company.

*(The following items conclude the list, which began in our Feb. 14 issue.)*

**6. If your processes aren't understandable by the intended audience, then you don't have processes.** You just have words on paper.

GTI asked its drivers to write their handbook, *The Jetco Way*. The company gathered four or five drivers who were good at a particular topic together with a writer who wrote up what they said. The drivers reviewed what the writer put together. All processes are a maximum of four or five sentences.

Convert processes into checklists and use them. If you keep the checklists as simple as possible, you'll get better results. People don't need to be taught as much as they need to be reminded.

**7. Dismiss severity.** Fielkow says the fact that an incident had a major or minor outcome isn't the most important thing.

Example: A driver tears up some grass. No big deal? No. The driver wasn't situationally aware. It's only luck that the driver didn't hit a kid.

To be good at prevention, don't treat the behavior behind a minor incident any differently than a major one. Do root cause analysis 100% of the time. It doesn't all have to take a long time and be formal.

Fielkow says a lot of times we come to the table with our minds made up, and we form the analysis to meet our own conclusion. To counter that, bring in someone from another area to help with the analysis.

**8. Focus on leading indicators.** Most indicators are a look in the rearview mirror. Leading indicators predict outcomes.

If you want to reduce serious injuries, focus on near misses, property damage accidents and minor injury accidents.

Counting near misses is a leading indicator. Want to get more near misses reported? Stop calling them near misses. Instead, call them good catches. Make sure there's a way to report good catches confidentially.

**9. Tear down silos.** Companies need to have divisions. That's OK. Silos are the kiss of death. What constitutes a silo? It's a state of mind. If someone else is drowning, "too bad." That's a silo.

Fielkow says once upon a time, he would have Operations meetings on Monday, and he would hear a lot about how the Safety team doesn't get it. He'd have Safety meetings on Tuesdays, and he'd hear about Operations playing cat and mouse.

On Tuesday night, Fielkow says he'd take two aspirin and try to figure out how to create harmony. Fielkow says he created his own silos – it was his own fault.

We create silos by how we incentivize people and who we invite to the table at meetings. So Fielkow doesn't have Operations or Safety meetings anymore. Now they're in the room together.

Allowing people to think safety isn't their responsibility is a dangerous silo. Why? Because it allows workers to think that safety is the responsibility of the safety department, instead of being responsible for it themselves.

**10. You can't win them all, don't try.** Your employees have to be at the intersection of your company values and being technically excellent.

When you have a person who is really aligned with your values but isn't technically competent, you're going to try to train that person, or else they can't be at the company.

But what about an employee who is technically proficient, but they think the rules don't apply to them? Now you have a big problem.

You don't have to fire a person. Coach them. And then coach them some more. But at some point you have to come to the realization that some people are uncoachable.

## TRAINING TIPS

### Use strong policies to combat distracted driving

With the U.S. Department of Transportation rolling out its new highway safety strategy (*SEE PAGE 3*), now is a good time to remind drivers they shouldn't use portable electronic devices while driving.

Using a portable electronic device – texting on your phone or switching to a different Spotify playlist – while driving dramatically increases the risk of a motor vehicle injury or fatality, according to OSHA.

Prohibitions against distracted driving should be made clear by:

- having a strong policy that prohibits the use of portable electronic devices while driving
- establishing work procedures and rules that do not make it necessary to text while driving
- making safe driving an integral part of their business culture, and
- providing continuous driver safety training and communication.

Drivers should be trained on driving distractions and to not solely rely on navigation and other advanced technology systems.

### In emergencies, think before rushing in to help

During an emergency situation, workers may feel the impulse to rush in and help fellow employees who may be in trouble.

That's understandable but should still be discouraged.

Why? Because it could turn a situation involving a single victim into one involving multiple victims.

For example, Indiana OSHA recently cited a company after one employee fell into a tanker trailer and succumbed to toxic gases.

Two other employees jumped in to help, but they almost succumbed to the toxic gas as well.

## ENFORCEMENT

### Lack of fall protection during bridge project leads to fatality

The Washington State Department of Labor & Industries (L&I) cited a construction company after a worker fell to his death during a bridge restoration project.

The worker fell 60 feet from the bridge deck to the ground below while laying concrete curing blankets on the bridge.

Investigators found managers and a foreman with Bellingham, WA-based Boss Construction were working side-by-side with workers and none of them were wearing fall protection.

Multiple employee interviews corroborated the lack of fall protection during the project and spoke to a lack of safety enforcement leading up to the fatal fall.

Many of the workers weren't using fall protection on the day of the incident and on other days.

#### Company slammed with \$284K fine

A catenary line – a horizontal line anchored at each end that workers can attach to for safety – had been installed, but it was only one side of the bridge deck.

That line spanned about 2,600 feet, but didn't span the entire 3,052 feet of the bridge, leaving about 200 feet on each end on one side of the bridge

without a line for workers to attach to as they walked on the bridge.

The other side of the bridge didn't have a catenary line at all and was completely unguarded as all the guardrails were removed several months prior to the incident.

L&I cited Boss with two egregious serious willful violations for failure to ensure workers used fall protection, leading to a \$284,000 fine.

#### Judge blocks vaccination rule for federal employees

A judge for the Southern District of Texas issued a nationwide preliminary injunction blocking a Biden administration executive order that required employees of federal agencies to get COVID-19 vaccinations.

The judge found Jan. 21 that the choice federal employees had to make between their jobs and getting vaccinated amounted to irreparable harm.

Statutory authority asserted by the federal government gives "the President substantial powers, but not so substantial as to ... require millions of federal employees to undergo a

medical procedure as a condition of their employment," the judge said, according to law firm Vorys Sater Seymour and Pease.

Under the injunction, the federal government can't enforce the vaccine mandate for federal employees in any state or territory of the U.S.

The Department of Justice intends to appeal the decision.

#### No comp for wellness program injury

Can a worker get workers' comp if injured while participating in a company wellness program?

According to the Oregon Court of Appeals, no.

In *Watt v. SAIF Corp.*, an employee tripped and fell while walking through a residential neighborhood during her break. This was in participation with a company-sponsored wellness program.

She filed a claim, which her employer denied as not being work-related.

The appeals court upheld the denial because there was nothing in her regular work duties that exposed her to the risk of tripping on a crack in a sidewalk away from the jobsite.

### SHARPEN YOUR JUDGMENT – THE DECISION

(see case on Page 2)

No, Pete's company lost when the court found that the inspector's alleged failure to follow OSHA's Field Operations Manual during the inspection didn't invalidate the legitimacy of the violations.

The supervisor in this situation – who was actually the owner of the company – admitted to OSHA via a signed statement, "My fall protection plan is roof anchors, ropes, fall harnesses, and rope grabs. The fall protection plan was not in effect upon my arrival at approximately 10:15 a.m. I do not know why the employees did not have the fall protection plan in effect."

A similar statement from an employee was also admitted as evidence, so employee misconduct couldn't be proven

since the owner and the employees acknowledged there was a fall protection plan which wasn't in use that day.

#### ANALYSIS: PLANS ARE NO GOOD IF NOT FOLLOWED

The workers in this case were exposed to falls that could've seriously injured or killed them – the simple existence of the safety plan would've done nothing for them.

We've said it here before: Just having a safety plan is not enough if no one follows it.

Safety pros know this, but getting it across to management, supervisors and employees can be difficult at times, especially when it's busier than usual.

However, this is an obstacle that must be overcome.

**Cite:** *Secretary of Labor v. Bonded Roofing Services*, Occupational Safety and Health Review Commission, No. 20-0554, 12/14/21. 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.*

### COURT DECISION

A Florida construction contractor was fined \$50,000 for lying to OSHA following two inspections in October and December 2017.

Alcir DeSouza, owner of DeSouza Framing Inc., pleaded guilty Jan. 26 to a felony count of making a false statement during an OSHA investigation.

The court found DeSouza lied to OSHA inspectors after the agency conducted investigations at two of his worksites, resulting in fall hazard violations and a proposed \$199,178 fine, according to the Department of Labor.

DeSouza was accused of willfully exposing workers to fall hazards by allowing them to work without fall PPE then lying about it to inspectors.

During both inspections, employees were observed working at heights of between 11 and 22 feet without using any fall protection devices.

The inspections were part of a Regional Emphasis Program for Falls in Construction.

### MINING

The convergence of mines with oil and gas wells has recently become more of an area of concern for the Mine Safety and Health Administration (MSHA).

Nationwide, thousands of oil and gas wells penetrate coal seams that are being actively mined, and an accidental intersection could cause problems for miners.

MSHA and state agencies evaluate thousands of requests to mine within 150 feet of oil and gas wells every year.

Those evaluations are conducted under the "Pennsylvania Joint Oil and Gas Well Pillar Study," which was published in 1957.

Coal mines today are deeper than ever before and the proliferation of

high-pressure gas wells has increased the potential consequences of an incident, according to MSHA.

New scientific information is now available, most notably downhole gas well surveys that show that depth has a big effect on the possible deviation between a well's surface location and its location at the coal seam level.

MSHA urges mine operators to review the agency's best practices for mining near oil and gas wells, which can be found at [msha.gov/training-education/safety-topic-development-mining-near-wells](http://msha.gov/training-education/safety-topic-development-mining-near-wells).

### RECORDKEEPING

Injuries sustained in a crash during an off-hours trip to work should be recorded as a work-related injury, according to OSHA.

The agency addresses this topic in a new standard interpretation letter that presents the following scenario:

As part of his normal workday, an employee commutes in his personally-owned vehicle from home to the workplace. At the end of his shift, the employee commutes from the workplace to his home. Later that same day, there is an emergency at the workplace, and the employee's supervisor calls him to return to work. The employee starts driving back to the workplace, but is involved in a crash resulting in an injury and hospitalization.

Can that injury be considered recordable?

In the letter, OSHA says that while injuries and illnesses occurring during an employee's normal commute from home to work, and from work to home, aren't work-related and not recordable, the scenario presented above is a different case.

Since the employee is traveling back to work "in the interest of the employer" then his travel becomes work-related and any injuries sustained during that travel time would be recordable.

## WHERE TO GET HELP

### NEW HOW-TO DOCUMENT ON SILICA DUST MONITORING

A new publication from the National Institute for Occupational Safety and Health (NIOSH) details how to implement monitoring for respirable crystalline silica.

This is primarily intended for industrial hygienists and safety professionals specifically within the mining industry, although those in other industries may also find it useful, according to NIOSH.

The document details how to implement field-based monitoring for respirable crystalline silica.

It was written for users with experience in respirable dust exposure assessment but who do not necessarily have specialized training in analytical techniques.

**Info:** [cdc.gov/niosh/mining/works/coversheet2175.html](http://cdc.gov/niosh/mining/works/coversheet2175.html)

## What safety pros say

How much more likely is it that an injured worker's child will suffer from mental health disorders?

Emotional, behavioral issues

72%

Depression or anxiety

50%

Short attention span

40%

Source: National Institute for Occupational Safety and Health

NIOSH found that children with parents who were injured at work are far more likely to suffer from mental health disorders.

**Info:** [bit.ly/32TEF5M](http://bit.ly/32TEF5M)

*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

### Blocked vaccination ETS withdrawn, but OSHA still working on COVID standards

**Q:** Since the U.S. Supreme Court blocked OSHA's COVID-19 vaccination-or-test emergency temporary standard (ETS) for employers with 100 or more employees, is the agency still looking to implement the standard?

**A:** For now, no. OSHA announced on Jan. 25 that it was withdrawing the ETS that would have required employers with 100 or more employees to mandate COVID-19 vaccines for their employees or subject them to weekly testing and mask wearing.

But there are some things to keep in mind – which are detailed below – according to law firm Shawe Rosenthal.

For example, healthcare employers need to remember there is a vaccine mandate in effect for those involved with Medicare and Medicaid programs, which the U.S. Supreme Court did allow while blocking the OSHA rule.

### Another vaccination-or-test rule could be in the works

**Q:** Is OSHA working on a permanent vaccination-or-test standard for employers outside of health care?

**A:** Probably. In its announcement on the withdrawal of the COVID-19 vaccination-or-test ETS for employers with 100 or more employees, OSHA makes clear that it's not withdrawing the ETS as a proposed rule.

Shawe Rosenthal says that means a version of the ETS could be proposed as a

permanent standard at some point in the future.

The notice and comment period for the proposed rule closed on Jan. 19, and OSHA will likely review any comments it received, along with the restrictions imposed by the Supreme Court's opinion.

### Healthcare standard could include vax requirement

**Q:** Is OSHA working on a permanent standard to replace its COVID-19 healthcare ETS and could that standard have a vaccination-or-test requirement?

**A:** Yes, the agency is working on a permanent standard to replace the healthcare ETS it withdrew in December 2021.

OSHA says it's focused on finalizing the permanent healthcare standard and promised to rely on the General Duty Clause and certain standards to protect healthcare workers in the meantime.

And while the original ETS didn't require vaccination, a permanent standard quite possibly could incorporate a COVID-19 vaccine mandate.

Like the mandate for healthcare workers involved in Medicare/Medicaid, a permanent COVID-19 healthcare standard with a vaccination requirement would likely be specific enough to satisfy legal requirements to move forward.

*If you have a safety-related question, email it to Merriell Moyer at: [mmoyer@safetynewsalert.com](mailto:mmoyer@safetynewsalert.com)*

## OUTSIDE THE LINES

### SECURITY CRIES FOWL: CHICKEN ARRESTED AS SPY

Let's face it, in today's world, workplace safety and security often go hand in hand.

And who in the U.S. takes security very seriously? The Pentagon.

Case in point: A chicken was recently detained at an undisclosed security checkpoint near the Department of Defense headquarters, according to the *Associated Press*.

The chicken – a Rhode Island Red, no less – was taken into custody by the Animal Welfare League of Arlington, VA, and has since been adopted.

Henny Penny, as the bird has been named, gained some notoriety as Jimmy Fallon performed a song about her on "The Tonight Show."

"Are you a normal clucker or an undercover spy?" Fallon sang.

## Did you know ...

### Warm-up before shoveling snow



Employees should **warm-up before shoveling snow** to avoid injuries and exhaustion.

Source: OSHA

Shoveling snow can be a strenuous activity. Workers should warm-up before shoveling, scoop small amounts of snow at a time and push the snow instead of lifting it.

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