

March 14, 2022

Worker: 'I can't work after falling!' Facility: 'Prove it' – who wins?

Goes home, doesn't report injury first

Plenty of workplace accidents and near misses for that matter aren't so easy to figure out.

You may run into a “he said, she said” situation where people don't agree on the facts, or there are different accounts of how someone got hurt on the job.

In a situation where there are multiple employers involved, the need for good communication is paramount.

The following safety case illustrates two important points for both Supervisors and employees:

- workers have a duty to report injuries

ASAP to Supervisors, and

- Supervisors must understand their role and responsibilities at all times.

Went home but didn't report injury

“Boomp! BAMMM!”

“What the heck was that noise?” said Giancarlo, a welder.

“Let's go take a look,” said Michael, an electrician who worked with the same contractor as Giancarlo.

Sitting on the floor with a dazed look on his face and holding his sides was Joaquin

(Please see Worker ... on Page 2)

Sharpen Your Judgment

Could a frayed cord cost this company \$4,000?

“I've got to say, I was shocked to hear that OSHA was issuing a fine,” said Supervisor Ian Gold. “We just completed our 596-point safety inspection – and we couldn't find anything wrong.”

“OSHA sees it differently,” said Safety Director Chris Taylor. “So let's go over exactly what happened.”

Turned away inspector at first

“An OSHA inspector wanted to investigate the site,” said Ian. “Our policy is no inspections without a warrant, so I let him know that. Honestly, I hated to turn him away since

I knew our workplace is spotless.”

“He came back the next day?” Chris asked.

“Yeah,” said Ian. “He did the entire walkthrough and didn't find one thing until the last five minutes. Then he sees a cord that was a little strained in an out-of-the-way part of the facility – and says it's a \$4,000 violation.

“He says a worker told him the cord had been that way for weeks, but it was the first I had heard of it,” Ian went on. “And we fixed it right away. I think we should fight this.”

The company argued it didn't know the violation existed and shouldn't be fined. Was it able to have the fine dismissed?

This regular feature sharpens your thinking and helps keep both you and your firm out of trouble. It describes a real legal conflict and lets you judge the outcome.

Make your decision, then please turn to Page 4 for the court's ruling.

Worker ...

(continued from Page 1)

Menino, a laborer and co-worker of both Giancarlo’s and Michael’s.

“Are you all right?” they asked.

Joaquin’s eyes nearly bulged out of his head. “Am I all right?!”

“I just fell from up there,” he said, pointing to a work platform above him.

Supervisor shocked by news

“We need to talk,” said Jonathan Haim, the property owner, to Brian Donahue, the Safety Supervisor.

“What’s up?” Brian asked.

“One of the contract workers is claiming he suffered a serious injury yesterday,” said Jonathan.

“He’s at the hospital now. Sounds like he took the train home but didn’t let us know first.”

“This is the first I’m hearing about it,” said Brian.

“He says he fell through the opening of that work platform,” Jonathan said, pointing up.

Brian took a close look. “How’s that even possible?” said Brian.

“Take a look. There’s a barrier around it to keep anyone from falling through,” said Brian.

Is worker’s story on the up & up?

“The hole is there to hoist items up and down, or for a ladder if employees are going up and down,” said Brian.

“Hmmm,” said Jonathan.

“Could it be the barrier wasn’t in place then?”

“If what this worker is saying is true, he may have removed the barrier,” said Brian. “If he did, he should’ve worn a vest and tied off.

“That’s on him,” said Brian.

“But to be honest, I don’t believe his story. That’s a 12-foot fall! And you’re telling me he went home on his own accord and not in an ambulance?” Brian exclaimed.

“That’s a good point,” said Jonathan. “His story is fishy.”

The worker (Joaquin) claimed serious injuries that prevented him from being able to work as a laborer.

He sued the host company for negligence. The company tried to get the case dismissed – with extreme prejudice – because it believed the worker lied.

What you need to know:

Preventing falls through floor openings or from open-sided work platforms may require one or more of these safeguards:

- guardrail systems
- personal fall protection
- safety nets
- warning lines
- restricted and/or designated areas, and
- control zones to mark off hazardous areas.

Fall protection fell to Supervisor

Result: A court ruled the worker’s testimony was credible enough to be heard by a jury and refused to dismiss the case (the worker is due for a hefty payout).

Key: The court ruled the host employer was responsible for providing fall protection to all workers, including contractors, and for ensuring guardrails were in place where needed.

The Supervisor’s contention that fall protection fell squarely on the contractor didn’t hold water, the court said.

Based on Medina v. CBP 441 9th Avenue.

TEST YOUR KNOWLEDGE

Clean work areas are safer

Supervisors know a dirty work area isn’t just an eyesore: It’s also a hazard OSHA can fine for.

But how far do your people have to go to keep an area clean?

Have your workers take this quiz by responding *True* or *False* to the following questions.

1. When cleaning up a work area, you can pile debris in one place before moving it to a trash container – as long as the pile is out of the way of foot traffic.
2. You can wait until the end of a shift to clean up grease spills.
3. If debris falls on the floor during the course of your work, you have some time to pick it up – even if it obstructs an aisleway people walk through.
4. If you see a spill on the floor, the first thing you should do is go get a mop to clean it up.

ANSWERS

1. **True.** OSHA regulations allow you to create a “collection point” for materials prior to their being tossed in a dumpster or trash bin. This applies as long as you keep other workers clear from the area.
2. **False.** Floors where people are likely to walk or work near must be kept clear of slip hazards at all times. Oil, grease, water and other spills should be cleaned up as soon as possible.
3. **True.** If something falls on the floor or your work involves creating debris (for instance, wall demolition), OSHA allows you to take your time to clean it up safely.
4. **False.** The first step to making sure a work area is safe following a spill is to alert co-workers and your Supervisor so you can be sure everyone is safe while you prepare to clean the area.

Answers to the quiz:

Fines, accidents and damage supervisors could've prevented

News you can use to head off safety mishaps

In this regular section we highlight situations that led to fatalities, injuries, near-misses, damaged equipment or fines that frontline supervisors could've prevented.

Contractor faces jail time for ignoring fall protection

What happened: Travis Slaughter, owner of Great White Construction and Florida Roofing Experts in Jacksonville, hasn't paid more than \$2 million in OSHA fines. Slaughter was inspected and cited multiple times for letting roofers work at heights without wearing safety vests and lifelines to protect them.

What people did: OSHA filed a civil contempt order after Slaughter didn't comply with court orders to follow fall protection guidelines. A federal court ordered him to pay his fines last year but he hasn't done so. Now OSHA is recommending prison time. Slaughter's companies were inspected 10 times by OSHA over the past 10 years.

Toxic fumes kill a worker, almost kill a rescuer

What happened: An employee at a truck stop and wash facility fell into a trailer containing decomposing chicken parts. Toxic fumes overcame him and he died on the scene. Another employee tried to rescue him and almost passed out. A third worker was able to save him.

Result: The empty trailer contained chicken parts and entrails which had been decomposing for about a week. Indiana OSHA cited the company, Heartland Truck Stop & Wash in Logansport, for:

- lack of guardrails or fall arrest systems on work platforms above trailer tanks
- failure to post an attendant outside confined spaces while other workers were inside
- allowing workers to enter tanks without wearing respirators and required PPE.

Total fine: \$276,396.

Crew at risk from heat and asbestos exposure

What happened: OSHA keeps finding problems every time it inspects activities of Compass Resources, a building and renovation contractor in Leafwood, Kansas.

Result: During three inspections since 2018, OSHA's written up Compass for failing to:

- follow federal respiratory protection requirements
- provide drinking water and hygiene facilities
- protect workers from asbestos and heat stress exposure
- remove damaged electrical cords
- provide adequate PPE
- address lead hazards
- correct all electrical wiring hazards, and
- implement adequate safety programs.

Lesson: The latest inspection led to the biggest total fine yet for the company – \$223,329. OSHA also issued the company hazard alert letters for asbestos and heat stress exposure. The company can expect another inspection soon followed by attention from the Justice Department if it doesn't correct its deficiencies.

SAFETY TRAINING TIPS

■ Get them to remember key point with this step

Safety professionals put time and effort into their presentations and training sessions.

The last thing you want is people walking away without a safety talk making any kind of impression on them.

Idea: Ask participants to repeat back one (and only one) important part of your talk.

For example, say "We're all responsible for looking out for each other's safety."

Ask a member of the session, "Who's responsible for keeping you safe on the job?"

A correct answer would be, "My co-workers and I am."

Then ask the group, "Who's responsible for safety here?" If they don't all answer, ask the question again until they all reply in unison.

■ Do workers understand safety data sheets?

It's not enough to provide safety data sheets (SDS) for the chemicals, solvents and cleaning materials at your workplace.

Employees need to be trained at least once on how to read a SDS so they understand why a chemical is hazardous and what other kinds of substances it shouldn't be allowed to come in contact with.

Staffers also need to know where they can find a binder with SDS or where they can access the info online.

You can post the SDS for all of your chemicals on your company's website or post easy-to-find hypertext links to SDS. Show staffers how they can do this on their phones or using company computers.

4 safety principles for Supervisors and employees to live and work by every day

Safe work practices must be ingrained

Speaking at the National Safety Council’s fall 2021 conference, Brian Fielkow, CEO of GTI, hammered home how companies and leaders need to live by safety principles.

Starts with the heart

“A lot of us are trained to think about safety in our heads.

“Safety has to begin in the heart.

“Get to know a thing or two about people who work for you. The more connection that’s built with employees, the more they will engage in safety.”

How transparent are you?

“Transparency is giving people the dignity of an explanation of why a change is being made.

“Those who are included in that discussion tend to support change.”

Safety culture is a just culture

To create a just culture – one in which people know there aren’t any favorites and every one is accountable if they don’t play by the rules – you need to

get rid of progressive discipline.

“When an employee makes a mistake, the question should be, was it an honest mistake or deliberate and reckless?

“If someone has made an honest mistake, [our company] coaches, trains and makes systemic changes.

“If it’s reckless behavior – like driving 50 miles per hour in a school zone, for example – that’s a ‘one strike and you’re out’ situation.”

Respect is key to safety culture

“You want a reward system that incentivizes safety.

“Professionals follow procedures. They do the right things when nobody’s watching.

“Sometimes people spend more time figuring out how to skirt the rules than actually complying with them. This is at the heart of so many safety failures – a lack of respect for process.”

Fielkow was named a “CEO who gets it” for 2022 by the National Safety Council.

What you need to know:

The National Safety Council (NSC) annually recognizes 10 CEOs “who get it” when it comes to safety.

What are the marks of a company leader who gets it?

The NSC bases the distinction on four key metrics that any company needs to be thinking about:

- risk reduction
- performance measurement
- safety management solutions, and
- leadership and employee engagement.

Sharpen Your Judgment – The Decision

(continued from Page 1)

Yes. The company contested the fine before the Occupational Safety and Health Review Commission (OSHRC), which dismissed it.

OSHA found a cord that had a small amount of wear and tear on it during the inspection. It said the company should’ve recognized the hazard, and issued a \$4,000 fine for the violation.

The company argued it didn’t have knowledge of the violation and shouldn’t be fined. It said the cord had minor damage that wasn’t readily apparent. The only proof it should’ve known was an unnamed employee had said it had been damaged for a while.

OSHRC agreed. It said OSHA had failed to

prove the company knew or should’ve known about the frayed cord, and dismissed the fine.

Analysis: Find the hazards first

Whether it’s one small mistake in a giant facility or several, OSHA can and will issue fines for safety hazards. And “We’re mostly safe” usually won’t be an acceptable excuse.

And if your company’s position is to turn OSHA away without a warrant, that’s OK. Just know that can often lead to an even more intense inspection when compliance officers come back.

Best bet: Always find and fix hazards yourself – before OSHA gets involved.

Based on Secretary of Labor v. Latshaw Drilling.

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Supervisors Safety Bulletin (ISSN 1528-9834), issue date March 14, 2022, Vol. 23 No. 530, is published semi-monthly (24 times a year).

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