

March 1, 2022

Forklift driver slams mast into ceiling: Can he sue for injuries?

Claims warning sign wasn't sufficient

“Did this facility get bigger since the last time I was here or am I imagining things?” asked Nick Murphy, a lift truck and heavy equipment contractor.

“Yeah! You’re not crazy,” replied Jerry Mingin, the Supervisor at Cross Trees Logistics.

“We extended the east end a few months back,” said Jerry. “I walk at least two miles in here every day, sometimes double that. I keep track of the miles using the fit-bit on my phone.”

“That’s pretty cool,” said Nick. “Well with this new forklift your company

ordered, you can take a ride to where you need to go, I guess,” he laughed.

“That’s true,” said Jerry. “The forklifts can go just about anywhere in here. Just park them inside the yellow lines!”

Forklift not just like other vehicles

Nick spent the morning checking the controls on the new forklift he’d delivered. Later he gave Jerry and some other staffers a tutorial.

“You sit higher in this forklift than you’re used to,” said Nick. “She’s perfect

(Please see Forklift ... on Page 2)

Sharpen Your Judgment

Daydreaming worker lands company in trouble

“Thanks for meeting me,” Safety Supervisor Jane said. “I wanted to talk to you about this OSHA fine.”

“It’s my pleasure and my job!” replied company lawyer Jack Wright. “Walk me through what happened.”

Didn’t follow training

“Craig was digging a ditch for us,” Jane said. “God knows where his head was, but he just kept digging and digging.”

“Next thing you know, he was five feet down – too deep for OSHA’s regs.”

“So Craig was in the wrong?” Jack asked.

“Definitely,” Jane said. “Everything he did went directly against our training.”

“Do you have that in writing?” Jack asked.

“Our safety manual has an entire section on excavations,” Jane said. “It may not cover digging depth in particular, but even Craig said he knew the rules and just wasn’t thinking.”

“When Craig ignored OSHA’s rules, he was ignoring our training, too,” Jane went on. “There’s nothing we can do if he didn’t listen!”

The company fought the fine, claiming they trained workers to be safe, but Craig ignored the rules.

Did the company win?

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.

Forklift ...

(continued from Page 1)

for reaching the highest racks you've got in here."

"Can we put it into service today?" asked a staffer.

"You need training on her first," said Nick.

Went for a test drive

"That's right," said Jerry. "Nick will be handling on-site training for a day or two until I'm comfortable it's a good fit."

The crew headed back to work. "On that note, I want to take her for a test spin in here," said Nick.

"Fine," said Jerry. "Like I said before, park along a wall inside the painted yellow lines."

Nick drove the forklift slowly through the sprawling worksite. He sounded the horn and came to a stop whenever someone walked near him.

Eventually nature called. "Excuse me," Nick asked an employee. "Can you point me toward the restrooms?"

"Straight through there about 100 yards down on your left," the employee said.

Nick drove the forklift up a sloped path, not slowing down as he headed toward a mezzanine.

"Slow down!" an employee nearby yelled.

The top of the forklift slammed

hard against the projecting mezzanine wall.

Nick wasn't wearing a seat belt and tumbled onto the floor. Jerry the Supervisor was among the first to arrive on the scene.

"Why didn't you tell me about the low wall?" demanded Nick.

"There's a warning sign right there," Jerry pointed. "The clearance is 11 feet."

"This forklift is taller than that," said Nick. "And I can barely even read that sign from here!"

Nick tried getting to his feet but lost his balance. The employees cautioned him to stay on the floor until an ambulance came.

Who's to blame?

The contractor claimed he suffered injuries to his leg, hip and elbow.

He sued the company for negligence. The company sought to get the case dismissed. Its arguments were:

- the mezzanine wall was an open and obvious hazard that shouldn't have required a warning to stay out of the area, and
- a warning sign listing the clearance was posted.

Result: The court allowed the case to move forward because a jury might determine the facility's warning signage wasn't sufficient to prevent an injury.

The company and the contractor will most likely settle out of court.

Based on *Scott Curtis v. Viega*.

TEST YOUR KNOWLEDGE

Quiz: Lifting safely tips to help prevent injury

Workers are often called on to lift and carry heavy loads on the job. Do it wrong and they can be out of work and in pain for awhile.

Have your staff see how well they know rules for lifting by answering *True* or *False* to the following.

1. When preparing to lift an object, you should hold your stretches until you feel a slight twinge.
2. The optimal zone for carrying an object is between the mid-thigh and mid-chest.
3. The "toe test" is one way to tell if an object is safe to lift alone.
4. If you're carrying an object over a long distance, twist your torso occasionally to relieve stress on your lower back and stay loose.
5. Back braces or back belts will protect you from most lifting injuries.

ANSWERS

1. *False*. Stretches should be held for 15-30 seconds. Consider using back, leg, shoulder and arm stretches to avoid injury.
2. *True*. This area is called the "power zone." It limits the chance of a lifting injury while leaving your view of the path ahead unobstructed.
3. *True*. If you can move a box or other object on the ground using only minimal force with one toe, it is likely safe for you to lift on your own. Otherwise, ask a co-worker for help or consider using a hand truck or other mechanism to help.
4. *False*. Never twist your torso while carrying an object. Move only in the direction your feet are facing.
5. *False*. Studies show these lifting aids provide little to no protection from back injuries. Following safe lifting procedures is the best way to prevent injury.

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.

Owners going to jail for roles in deadly explosion

What happened: Employees at Nebraska Railcar Services in Omaha were responsible for removing gasoline, food waste, pesticides and petroleum byproducts off railcar surfaces. One day in 2015, a spark ignited flammable gases inside a car. No one had tested the railcar first despite the presence of benzene and an unacceptably high explosive gas level. Two employees were killed by the blast and a third was gravely injured. OSHA inspectors found the company lacked a hazardous waste program, didn't monitor air quality properly in confined spaces or train workers on hazardous material safety. OSHA issued a \$963,000 fine. Company executives Stephen and Adam Braithwaite tried hiding the violations from OSHA, so OSHA referred the case to EPA and the Justice Department, which later brought 22 criminal charges.

Result: Steven was sentenced to 30 months in prison and Adam sentenced to one year. Each must also pay \$100,000 in restitution.

Killed by the heat: Crew saw warning signs too late

What happened: A worker clearing brush in 100-degree temperatures died from the hazardous heat conditions. The employee began sweating heavily, trembling and showing signs of confusion. He rested while the crew continued with its task, and when a supervisor returned to check on him 30 minutes later, he was

unresponsive. Because there was no cell phone signal, the crew had to get help from a ranger station 14 miles away from the job site, and by the time an ambulance became available the worker had died.

Result: Earthbalance Corporation, a landscape architectural services company based in North Port, Florida, was fined \$24,576 for failure to:

- provide employment free from recognized hazards associated with high ambient heat likely to cause death or serious physical harm, and
- ensure a hospital or infirmary was in close proximity.

Heads up: OSHA is preparing a new safety rule to address heat hazards in the workplace. For more info, go to www.osha.gov/heat-exposure/rulemaking

OSHA not letting up on coronavirus safety checks

What happened: A Milledgeville, Georgia, grocery store faces \$9,362 in fines for not protecting workers from coronavirus and safety hazards. The facility was cited under OSHA's National Emphasis Program for Coronavirus Disease.

Result: Inspectors found Johnnie McDade Grocery failed to develop effective measures to reduce the spread of coronavirus, including mandatory use of face masks and enforcing social distancing guidelines. The grocer was also cited for not having a proper machine guard on a meat cutter band saw to prevent users from suffering amputated fingers or hands.

SAFETY TRAINING TIPS

■ Supreme Court nixes COVID rule – what next?

By now, you've heard that the Supreme Court shot down OSHA's emergency temporary standard (ETS) for COVID.

The policy would've forced employers with 100 or more employees to mandate their people be tested regularly for COVID or be vaccinated.

By a 6-3 vote, the court ruled the policy was overreach, in part because Congress didn't pass legislation to make vaccines mandatory.

What's next for facilities that still have masking policies? You may need to remind employees more often that your policy remains in place and needs to be followed.

As always it's important that people in leadership positions, such as Supervisors, set a good example and are there to answer questions, and concerns about health risks, mask fatigue, etc.

■ Keep the folks who matter in mind all year

Building a strong safety culture is a lot easier if it's a family affair.

Consider this example from Brian Fielkow, CEO of GTI Group, a logistics company, who presented at the National Safety Council's fall 2021 conference.

Every couple of years, GTI sends a box of crayons, blank paper and a letter to families that asks kids to draw what safety means to them.

The children's drawings become the company calendar which they send to their employees and customers.

Imagine the impact that has on employees on the job! It's a fun and impactful safety measure, one that provides memories for years.

Temporary hazard could've been worker's end: Why wasn't the site inspected?

Injured employee files a lawsuit

“Come here a second, Peter,” Supervisor Mark Ruttle said.

Peter exchanged an “oh no” glance with his co-worker. Whenever his Supervisor used that phrase, it meant you were in for a long afternoon.

“What’s up, boss?” he asked.

“We need to add mixer to Tank 1,” Mark said. “Carry a bag up and put it in.”

To reach the tank, Peter had to climb several flights of stairs to an elevated walkway – with a heavy bag full of mixing materials.

“Aren’t they still working on that walkway?” he asked hopefully.

“No,” said Mark. “The contractors who were fixing it said they finished up this morning. Just have to clean up this afternoon and they’ll be done.”

“OK then,” Peter said, grabbing a bag.

“Want someone to help you carry that?” Mark asked.

“Nah,” Peter replied, slinging it over his shoulder. “I’ll be fine.”

Halfway up the stairs, Peter was already

getting winded. But he pushed through.

When he reached the top, he got the scare of a lifetime.

Peter walked along the platform, but his foot came down on a hole the contractors had made in the walkway. The bag of material fell 75 feet with a thud.

Miraculously he was able to stop himself from falling and hoist himself up with all his strength – the fall would surely have been his end.

Worker required surgery

Peter didn’t escape unscathed. He suffered leg and shoulder injuries in the near fall that required surgery.

He opted to sue the contractor for his injuries.

Result: Not wanting to risk a trial, the contractor settled for \$144,511.

Key: This company was fortunate its employee didn’t fall to his death – and also lucky the employee didn’t try taking his employer to court too.

Based on an accident at Livermore Falls.

What you need to know:

Temporary hazards can cause permanent harm – or death.

Make sure to:

- advise workers of any temporary hazards that may be on your site
- mark off and put barriers up around hazards until they’ve been fixed
- inspect work done by contractors or non-employees to make sure they’re leaving the workplace in safe condition, and
- conduct regular walkthroughs to look for hazards.

Sharpen Your Judgment – The Decision

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No, the company lost when OSHA’s review commission upheld the fine.

The company argued its safety documents stressed the importance of following OSHA’s rules.

If a worker chose to ignore those rules, there’s nothing it could do.

But the OSHA review commission wasn’t satisfied with that explanation.

As Jane admitted, there wasn’t an actual section in the training materials covering digging depths.

Without those rules written down anywhere in the training manual, the company couldn’t claim Craig ignored them.

Therefore, the company was responsible for the violation.

Lesson Learned: Get it in writing

Just telling workers the right way to do things isn’t enough: not for OSHA, and not for the safety of your employees.

Make sure you’ve got written training records that address all critical safety situations workers may face.

And hold them accountable for following those directions by writing up rule violators.

Case based on Secretary of Labor v. ComTran Group.

EDITOR-IN-CHIEF:
SCOTT BALL
sball@safetynewsalert.com

MANAGING EDITOR:
MERRIELL MOYER

PRODUCTION EDITOR:
JEN ERB

EDITORIAL DIRECTOR:
CURT BROWN

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