

April 1, 2021

Worker pinned under tire: Is firm on hook for permanent disability?

Employee injured while working in the rain

“Cats and dogs out there!” yelled maintenance technician Charlie Jones. “That is a nasty rainstorm.”

“I hate the rain anymore,” said shop foreman Vernon Prentice. “I can feel injuries from 20 years ago. Like my knee is so sore right now ...”

“It’s called getting old,” said Charlie.

“Naww I’m telling you, wet weather makes it worse,” said Vernon.

“I hear you,” said Charlie. “Wish we had a little more help with the work orders we’re dealing with.”

“I’m afraid it’s just you and me for the rest of the week,” said Vernon.

“Can you take care of replacing the truck tires? Maybe roll one at a time with the rain and all,” Vernon suggested.

“I’ll take care of it,” said Charlie.

Bit off more than he could chew?

The service truck was up on blocks, awaiting two new tires. As he’d done many times before, Charlie started rolling a tire with each of his arms and headed out of the service bay into the pouring rain.

“Whoa!” Charlie yelled as he lost control of one of the slippery tires.

He lunged forward to stop it before

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Sharpen Your Judgment

Is firm liable for subcontractor’s PPE violations?

“Shouldn’t Hank’s crew be paying the fine?” Supervisor Bill Coleman asked. “They were the ones who skipped fall PPE.”

“It doesn’t work like that,” Safety Director Chris Taylor said. “We were the general contractor on that site. So OSHA says making sure subcontractors wore PPE was our job.”

“If I had known they weren’t wearing fall PPE, I would’ve sent them home ... again,” Bill said. “It’s ridiculous how bad they were.”

Didn’t know they weren’t tied off

“They’d done this before?” asked Chris.

“Yeah,” Bill said. “If I saw them not wearing

PPE, I’d go up to the roof and send them home for the day. I take fall hazards seriously.”

“Did you see they had skipped it the day OSHA showed up?” Chris asked.

“No,” Bill said. “The OSHA guy came into my trailer and pointed them out on the roof.”

“Then what happened?” Chris asked.

“I went up there and told those guys to tie off,” Bill said. “For about the tenth time.”

“If you didn’t know the subcontractors weren’t wearing PPE that day, I don’t see how you could’ve stopped it,” Chris said.

The company fought the fine for exposing workers to fall hazards. Was it 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.

Pinned ...

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it rolled away, but the heavy tire toppled over and pinned Charlie to the asphalt.

“Arggh!!” Charlie gasped. “Vernon ... Vernon ... help ...”

Severe & painful injuries

The veteran worker felt terrible back and shoulder pain. He was examined by a neurosurgeon and underwent a microdiscectomy to repair a herniated disc in his lower back.

But the surgery “didn’t take.” He went under the knife a second time to fix his back a few months later, a third time for a lumbar fusion and lastly for a torn rotator cuff.

The employee tried working again but couldn’t stand the pain and discomfort. He was fitted with a back brace and cane, and went on daily pain medication.

He filed a workers’ compensation claim seeking permanent and total disability benefits.

Docs all on same page

The company contested the employee seeking total and permanent disability which would hit it hard in the wallet and drive up its insurance costs.

Doctors testified that the pain and diminished mobility made it impossible for the man to work again, particularly since “all

of [his] jobs required heavy lifting or manual labor.”

Case in point: In his last job in which he got injured, he routinely had to lift and move items weighing up to 75 pounds.

Result: The state supreme court ruled the employee was entitled to permanent and total disability.

Our bodies have their limits

Would this accident have happened it hadn’t been raining?

Should a foreman or co-worker have insisted the employee move one tire at a time – or offered to help him do the job?

All are good questions that can’t be answered for certain.

There’s no question the weather played a part. But it’s too late to turn back the clock for the

incapacitated ex-employee now.

Key: There are all kinds of tasks people take on when it’s probably a better idea to ask for help.

No two workplaces are exactly alike, so your pressure points may be tool handling or working on ladders and so on.

Urge staffers to keep an eye out for a team member biting off more than he can chew. For example, it could be as simple as lifting one too many heavy boxes without resting or using a hand truck.

Based on Hedrick v. Penske Truck Leasing.

What you need to know:

Back surgeries, including fusions of damaged discs, have a high rate of failure.

It’s crucial to practice safe lifting techniques to prevent a life-altering injury. Remember to:

- bend at the knees and crouch down to pick up items
- hold items as close to your body as possible, and
- lift with your rear end and legs not your back.

TEST YOUR KNOWLEDGE

Compressor safety: Not just a lot of hot air

Many workplaces use air compressors, especially for cleaning and maintenance. But staffers need to protect themselves from hazards like loud noise to skin abrasions and even trip-and-fall dangers.

How much do your staffers know about safely using compressed air? Have them answer *True* or *False* to the following questions to find out.

1. It’s OK to operate a compressor if it doesn’t have an air filter.
2. When cleaning with compressed air, you’re not allowed to have the pressure higher than 29 PSI.
3. Before using compressed air to blow dust away, you need to be sure the dust isn’t combustible.
4. Because of the potential for injuries from using compressed air, safety glasses and hearing protection are essential PPE.

ANSWERS

1. *False.* A filter needs to be installed on the compressor’s intake to ensure that only clean, uncontaminated air enters the compressor. Polluted compressed air could potentially harm you.
2. *False.* You can, but *only* if the compressor has an approved nozzle with pressure relief and clip guard. If not, 29 PSI’s the limit. Compressed air can cause combustible dust to be suspended in the air and lead to a fire or explosion. If the dust could combust, find another way to clean the area.
3. *True.* Compressed air can cause combustible dust to be suspended in the air and lead to a fire or explosion. If the dust could combust, find another way to clean the area.
4. *True.* If it’s appropriate for the job, other PPE you should consider wearing includes:
 - face protection
 - a hard hat
 - safety shoes, and/or
 - vibration-reducing gloves.

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.

Worker in unprotected trench: \$299K fine

What happened: Two years after a contractor agreed to adopt a comprehensive safety program following an employee's death in a trench collapse, OSHA inspectors observed another one of its employees working in a 7-foot unprotected trench.

What people did: Besides noncompliance with the terms of an Occupational Safety and Health Review Commission settlement, Arrow Plumbing of Blue Springs, MO, was fined for:

- failure to provide safeguards against trench collapse
- exposing an employee to unsecured electrical and gas lines, and
- allowing an employee to work in a trench without head protection.

Result: Arrow Plumbing is on the hook for \$299,590.

Lesson: This expensive fine could've been avoided had the promise made to the feds to implement a safety program been kept. It's also up to Supervisors to put safety plans into action to avoid hazards like these.

Failure to inspect leads to fatal crash, \$8.4K fine

What happened: Indiana OSHA fined road construction contractor Walsh & Kelly of Griffith, IN, for failing to inspect its job sites frequently enough

following a crash that killed a tank truck driver.

What people did: The driver died from blunt force trauma after a tractor-trailer crashed into his vehicle and a pickup truck that were part of a road shoulder maintenance project, according to *The Times of Northwest Indiana*. Investigators found Walsh & Kelly didn't ensure IOSHA standards for traffic control safety were followed.

Result: The company will pay \$8,400.

Lesson: Supervisors need to make sure there's a competent person to conduct regular safety inspections of job sites. Failure to do so could draw a serious violation.

Gas fumes in confined space kill 2 workers: \$419K

What happened: Two rail tank car service workers in Hugo, OK, died from inhaling toxic fumes.

What people did: A worker became unresponsive after entering a natural gas rail car to clean it. A second employee entered the car to make a rescue attempt and was also overcome. OSHA found that their employer, Dallas-based Trinity Rail and Maintenance Services, failed to:

- require permits to allow entry into a confined space
- ventilate the space, and
- monitor hazards inside a confined space.

Result: The fines total \$419,347.

Lesson: Working inside confined spaces is so dangerous that there are detailed federal workplace safety standards. Check out [osha.gov/confined-spaces](https://www.osha.gov/confined-spaces)

SAFETY TRAINING TIPS

■ Employees burned out? Know the warning signs

Workers are more stressed than ever, and that includes desk warriors stuck at home as well as frontline workers like yours who don't get to stay home.

There are some telltale signs of stress that Supervisors want to keep an eye out for. Employees under excess stress:

- **Avoid work.** Output drops and they don't respond like normal during agreed-on, regular hours.
- **Perform less.** They miss goals and don't produce the same quality of work.
- **Become apathetic.** They aren't interested in their work, team, company, etc.
- **Don't take time off.** Some employees go to the extreme other side of avoiding work and instead over-work.
- **Are irritable.** They get irritated by colleagues, family members or any interruption.
- **Indicate hopelessness, worry or sadness.** They notably aren't as pleasant or cheerful as they once were.

If you recognize these symptoms, it's time to step in, discuss workload, how they're feeling and if there's anything you or the company can do to help.

■ You can't praise them enough: It goes long way

A lot of workers don't like being the center of attention or put on the spot in a meeting.

However: Everyone appreciates getting credit due for a good idea or a job well done.

Make sure to acknowledge team members' accomplishments as well as ideas and suggestions in group discussions. This builds trust in your leadership skills, and camaraderie among team members.

They'll know they're appreciated.

Worker disagrees with Supervisor about return to normal work: Who's right? Court says ...

Medical provider cleared him to return to work

Machine operator Jay Valentine got the attention of his Supervisor, Dave Merkel. "Dave, this workload is too much," he said.

"I know it's intense," said Dave. "But everybody here is busting their tails right now because of production demands."

"Dude, I'm still not right from when I hurt my neck and my back," Jay said. "Remember that day I was in so much pain that you had to take me to the hospital?"

"That was the first day you came back from workers' comp leave. I was worried you were having a medical emergency," Dave replied.

Medically fit for work?

Dave continued: "But the independent medical exam paperwork your doctor signed off on says you made 'maximum medical improvement' and you can work with no restrictions.

"It also says that trip we made to the ER was because of pain from a kidney stone and wasn't related to your injury

or your work tasks."

"He has to be wrong. My back is sore all the time now when I work," Jay said.

"Jay, if you need a special accommodation to do your job, you need to go tell HR right away," Dave replied.

Walking away, Jay angrily said, "You know what? I really don't like the way I've been treated around here since I've been back."

The workers' comp claim was resolved, but then Jay sued his employer for disability discrimination.

Result: The court dismissed the lawsuit, calling it a rehash of Jay's workers' comp claim. He couldn't prove he pursued all possible administrative remedies or that he even had a legitimate Americans with Disabilities Act disability, the court said.

Key: This case is a reminder how important it is for Supervisors to have, understand and follow orders from medical professionals to help workers safely return to work after injury or illness.

Based on Gergawy v. United States Bakery.

What you need to know:

Jay's discomfort may be from improper work ergonomics. To lessen muscle fatigue and reduce the number and severity of injuries, consider:

- modifying work equipment
- using PPE that reduces exposure to injury risk factors, and
- implementing a system where employees rotate between jobs that use different muscle groups, minimizing duration of exertion, repetitive motions and awkward postures.

Sharpen Your Judgment – The Decision

(continued from Page 1)

No. The Occupational Safety and Health Review Commission (OSHRC) upheld the fine.

OSHA fined the company when it observed workers not wearing fall PPE on the job site.

The company argued its subcontractor had been warned multiple times to wear fall PPE. It had even sent the offenders home on some occasions for breaking PPE rules.

It said that it hadn't found out that the workers skipped PPE until OSHA showed up that day.

But OSHRC said the fine should stand. It said since the inspector showed the Supervisor workers without PPE through the window of the trailer, it should've been easy

to spot the safety violation.

And if the crew had been lenient about PPE in the past, it was all the more reason to watch them closely throughout the day.

Analysis: Know safety roles

It can be difficult to tell who is responsible for enforcing safety rules sometimes – especially when multiple teams are working on the same site.

Make sure you always know which employees are under your watch – and keep a careful eye out for those teams that don't value safety as much as your organization.

Based on Secretary of Labor v. Evergreen.

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