

May 14, 2021

No one flagged hoist hazard in time: Worker's arm slashed badly

Unlevel floor & overloaded carts were a hazardous combination

“Let’s see, what else haven’t we covered?” asked Supervisor Paul Gidaro at a morning safety chat with his staffers and contractor employees.

The team was four days into the gutting and rebuild of a commercial property. It had been smooth sailing so far.

“Oh yeah, we need to hoist stacks of metal meshing to the 2nd and 3rd floors,” Paul continued. The Supervisor pointed to A-frame cart dollies about to be loaded with meshing.

“Those sheets are sharp as a knife, believe me,” said Paul. “Take it easy handling them and moving them.

Remember to keep an eye out for each other and let’s be safe out there!”

Workers nodded and some of the older ones laughed at Paul’s referencing the old TV show “Hill Street Blues.”

“Come on, those carts aren’t loading themselves,” one of the workers joked.

Site inspections lacking?

James Rojas, a contract laborer, was asked to start moving the stacked dollies to the construction elevator. He remembered Paul the Supervisor’s warning to be careful

(Please see Flagged ... on Page 2)

Sharpen Your Judgment

Did a net provide enough safety for scaffold?

“They can’t be serious,” Supervisor Stan Emerson said, looking at an OSHA document. “What do they mean we didn’t protect our workers from falls?”

“OSHA says there wasn’t any fall protection on the lowest level of the scaffolding,” Safety Director Chris Taylor explained.

“We had a debris net installed,” Stan protested. “This is bogus.”

Net designed to catch workers

“Tell me about that netting,” Chris said. “What were the specs on it?”

“It’s designed to catch and support debris up

to 2,500 pounds,” Stan said.

“I know I could stand to lose some weight, but I don’t weigh a ton,” he said. “That netting was strong enough to support me, my whole team and all our equipment.”

“Were there any guard rails in place on the scaffold?” Chris asked.

“On every other level,” Stan said. “But this was barely 10 feet off the ground. And the net was enough to protect us from falls.

“This inspector just wanted to find something wrong,” he said.

The company tried to get the citation thrown out. Did it succeed?

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.

Flagged ...

(continued from Page 1)

handling the sharp metal mesh sheets.

He noticed right away the first stacked dolly was almost as tall as he was, and heavy to move. Sheets stuck out two feet off the open sides of the cart.

Whether he noticed the load wasn't secured with rope, padded straps or at least bungee cords isn't certain.

"This sucker is really heavy!" James said.

"Hang on, we'll give you a hand," yelled a co-worker.

Two employees helped James steer the dolly toward the construction elevator. No one saw the hoist platform didn't sit flush to the floor.

Materials sharp as a sword

"Whoa! Watch out!" one worker yelled as the cart slammed into the edge of the elevator platform.

The two men helping James avoided injury. But a mesh sheet toppled over and James tried to catch it.

"Arggh!" James bellowed. Blood spurted out as the mesh metal sheet cut deep into his forearm.

Co-workers ran to grab towels to stem his bleeding and call 911. Minutes later a paramedic treated James. She noticed the dolly cart looked "overloaded" in her opinion, which she'd testify later

in court after James sued the property owner and general contractor for negligence.

Court: Hoist wasn't safe

A court dismissed most of James' claims but not the key one – failure to provide a safe hoisting device (the construction elevator).

Reason: Many state labor laws impose "absolute liability upon owners and contractors who violate the statute by failing to provide or erect safety devices necessary to give proper protection to workers exposed to elevation-related hazards."

Evidence showed the construction elevator floor wasn't level with the building's floor, which created a trip hazard.

The companies can take their chances in front of a sympathetic jury or pay a hefty settlement now.

Key: Two work-arounds would've prevented this accident until the problem could be fixed:

- having workers lift protected stacks of mesh sheets onto the hoist, or
- securing sheets safely to the dolly carts so loads couldn't shift and fall off while being rolled.

Warning workers and telling them to "be safe" isn't as effective as taking a close look at work conditions and going the extra mile to prevent accidents.

Based on Vazquez v. JMR Construction Management: leagle.com/decision/innyco20210401325

What you need to know:

Frequent site inspections help prevent accidents. To make your inspections successful:

- add as many eyes as you can (multiple checkers)
- do spot checks during the day
- schedule repairs immediately and flag hazards (yellow tape, orange cones), and
- make sure everyone knows who's responsible for flagging problems especially on jobs with multiple employers.

TEST YOUR KNOWLEDGE

No harm, no foul?: Workplace near-misses

It's critical for Supervisors to know whenever there's an accident, even if it doesn't result in someone getting hurt, sick or causing property damage.

Do your staffers know what to do when there's a near-miss on the job? Have them answer *True* or *False* to the following questions to find out.

1. The first thing you should do after a near-miss is finish the job, then report it to a Supervisor.
2. Reporting near-misses helps to decide who's to blame for what went wrong.
3. If you have a near-miss, you only need to tell your Supervisor what happened, then you can get back to work.
4. After a near-miss, you should look at the equipment, materials and situations that led to the incident.

ANSWERS

1. *False.* When a near-miss happens, stop working immediately, report it to your Supervisor and figure out what went wrong before resuming work. You might not be lucky enough to avoid an injury if it happens again.
2. *False.* Reporting near-misses helps figure out the root cause of what went wrong so future injuries can be prevented – not assign blame.
3. *False.* It's also important to alert your co-workers about what happened so they avoid making the same mistake.
4. *True.* Examining the equipment and materials involved in a near-miss can help identify problems, such as a previously unknown defect. Reviewing what happened can also be helpful for correcting hazards and making the job safer for everyone.

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.

Multiple safety violations cost firm close to \$394K

What happened: Shyft Group Duramag, an auto body manufacturing plant in Waterville, ME, was fined after an OSHA inspection triggered by a complaint.

What people did: Inspectors found employees working on top of truck bodies without proper fall protection and observed others exposed to excessive noise levels while steam cleaning. The employer failed to:

- provide auto lift training
- prevent struck-by and crushing hazards from homemade attachments used on auto lifts
- provide adequate protective eyewear for workers near a welding area that doesn't have noncombustible/flameproof screens or shields
- establish a respiratory protection program, and
- secure machines to prevent unnecessary movement.

Result: The 12 violations add up to \$393,992 in proposed fines.

\$36K fine for not taking asbestos precautions

What happened: Renovation contractors Wright Brothers and First Team Restoration, both of Boise, ID, were fined by the feds.

What people did: They failed to:

- test and inspect drywall and joint

compound for asbestos before removing it, and

- notify EPA at least 10 days before beginning the renovation of an older commercial building.

Result: The penalty is \$36,000.

Note: Asbestos exposure leads to serious health problems. When doing demolition or remodeling in structures built in 1980 or before, asbestos materials need to be kept wet and bagged and workers must wear PPE to prevent exposure to asbestos dust.

Slapped with willful COVID-19 violation: \$136K

What happened: Liberty Tax Service franchisee Ariana Murrell-Rosario was fined under the General Duty Clause for not protecting employees from coronavirus hazards.

What people did: After a referral from the state Division of Labor Standards, OSHA paid a visit and found the Lynn, MA, business:

- prohibited employees from wearing face coverings despite a statewide mask order
- required employees to work within six feet of each other and customers for multiple hours while not wearing face coverings
- failed to provide adequate ventilation, and
- failed to implement virus transmission controls.

Result: The willful violation carries a \$136,532 fine.

Note: To avoid a stiff fine like this one, read up on OSHA's new COVID national emphasis program at bit.ly/covid510

SAFETY TRAINING TIPS

■ Worker complaint? Keys on how to follow up

If you've read this publication long enough, you know companies that don't address employees' safety complaints often end getting a "surprise" visit from OSHA!

No doubt you follow up on legitimate concerns and see that they're rectified or work toward a solution.

Just remember to always communicate back to staffers what's being done (if anything) and thank them for bringing an issue to your attention. For a problem that requires time, give them a heads up about it.

Key: People want to know their opinion matters and they're part of a teamwork culture.

■ When 'meeting fatigue' sets in, go back to basics

Most people zone out during meetings whether they're in-person or online. Sometimes the information can be repetitive, for example.

Sarah Gershman, president of Green Room, suggests four ways to prevent folks from zoning out and avoid "meeting fatigue":

- Define your goal or goals for the meeting, state them and stick to them until the end.
- Reiterate, but don't repeat. Listen carefully to people's points. State the point you want to add to and then if necessary, you can try sharing a different perspective.
- Cut it short if you can. If you've scheduled a 20-minute talk and you've covered it in 15, don't feel the need to keep it going.
- When you wrap up, ask if anyone wants to discuss a point one-on-one with you. Sometimes people don't want to extend a meeting any further but they've still got a point they want to make to you.

Source: greenroomspeakers.com/meet-sarah-speech-coach

Guardrail collapse injures employee: Does employer have any shot at fighting violation?

Would inspected guardrails have been adequate fall protection?

Supervisor Dale Ziegler stood in the bucket of an aerial lift just below the edge of the roof his crew had been installing.

“OK Jim, start handing me all our tools and stuff,” he said.

“Be patient, this could take a while,” replied construction crew member Jim Galway, dropping to his knees so he could easily reach the materials and tools and pass them down to Dale.

The fall protection they were using was a guardrail system with wire cables.

Guardrail gave way

Jim’s knees became fatigued. “Ugh, I need to stand up,” he muttered. When he grabbed the midrail to pull himself up, the midrail and top rail collapsed.

“Help!” he yelled as he fell over the roof edge into the loaded lift bucket.

Jim’s injuries landed him in the hospital, which meant having to notify OSHA.

The inspector reported a proper safety inspection of the guardrails wasn’t carried out. When a serious violation was issued,

Dale’s company appealed.

Result: Although the judge said the company should’ve been more diligent in its inspection efforts, the citation was thrown out on the grounds the feds didn’t present evidence that demonstrated:

- the capacity of the guardrail at full strength
- the amount of force applied by a worker weighing 200 or more pounds pushing down on the rail to stand up, and
- the amount of force applied by a worker weighing 200 or more pounds falling over into an adjacent rail.

Key: An OSHA citation doesn’t automatically mean an employer is on the hook for the proposed fine. Employers have the right to talk things over with their area OSHA director and appeal to the agency’s review commission to get fines reduced or even vacated. To download “Employer Rights and Responsibilities Following a Federal OSHA Inspection,” go to bit.ly/rights510

Based on Sec. of Labor v. George Weis Company.

What you need to know:

When using guardrails as fall protection in construction:

- Midrails, screens, mesh, intermediate vertical members and solid panels must be able to withstand a force of at least 150 pounds applied in a downward or outward direction.
- Top rails and midrails must be at least a quarter-inch in diameter to prevent cuts and lacerations.
- Steel or plastic banding can’t be used as top rails or midrails.

Sharpen Your Judgment – The Decision

(continued from Page 1)

No, the company lost and was ordered to pay a fine by the Occupational Safety and Health Review Commission (OSHRC).

The company argued it protected its workers from fall hazards.

It had installed a debris net that could catch up to 2,500 pounds on the first level, well above the weight of the workers and their equipment.

But OSHRC said that didn’t go far enough. It pointed out fall protection needs to include guard rails, personal fall PPE or both.

Using a net designed to prevent objects from striking the ground wasn’t the same as using protection designed to keep workers

from falling – no matter how much weight was being supported.

Check with the regs first

It may seem like using logical solutions can keep your workers safe.

But as this case shows, OSHA inspectors are trained to enforce safety rules to the letter.

Make sure workers are using the required PPE even if seems redundant.

Bottom line: The more levels of protection workers have against falls and other hazards, the safer they’ll be.

Based on Secretary of Labor v. P.J. Spillane.

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