

June 14, 2021

Staffer suffers severe face burns: Skipped LOTO, didn't wear PPE

Facility didn't learn from previous citations

“What the heck are you doing?” asked Supervisor Eddie Valens. Machine operator Mike Clifton was about to use a tool on a plastic molding machine.

“The machine’s running weird,” Mike said. “I think I know what the problem is though. It’s about – ”

“Last I checked, we had a Maintenance department for repairing machinery,” Eddie interrupted. He pulled the wrench away from Mike.

“Remember how we talked the other day about ‘staying in your lane?’”

“Oh yeah,” said Mike. “Sorry about that. I’ll give Maintenance a call.”

“Might as well shut down the machine while you’re at it so it has a chance to cool down,” said Eddie.

“Will do,” said Mike.

Lockout/tagout takes time

A few minutes later, master maintenance technician Sean Laraway arrived to diagnose the problem.

“This baby is so reliable, hardly ever has a problem,” said Sean. “Did you shut it down when you called me?”

“I did,” said Mike. “The Supervisor told

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Sharpen Your Judgment

Was worker untrained or unwilling to listen?

“Chris, why is OSHA fining me for not training Pat on working with pipes?” asked Supervisor Cal Hornsby.

“Well, he was injured when he was fixing the pipe, right?” Chris asked.

“Yeah, the one I told him to stay away from in the first place,” Cal said. “Which was why I told him to wait for help.”

Worker told to stay away

“So you didn’t ask Pat to fix it?” Chris asked.

“Heck no,” said Cal. “He came over and asked if he could fix something. I told him no, we’d have one of the guys who was trained to

fix that take care of it.

“A little while later, I hear guys all yelling for help. Pat had been fooling with the pipe, and the built-up pressure caused a section to shoot off and hit him,” Cal said.

“OSHA’s very specific that workers need to be trained on the hazards of the workplace,” Chris said. “I could see why that could be their thinking in this case.”

“There wouldn’t have been any danger if he had done like he was told and waited for help to arrive,” Cal said.

The company fought to get the fine dismissed. Was it successful?

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.

Staffer ...

(continued from Page 1)

me to shut it off so it could cool down for you.”

“That’s perfect, you’ve saved me some time!” said Sean.

Sean knelt down to check his toolbox. “Can’t tell how long this will take, but for now it’s out of service. I’ll let you know how it goes,” said Sean.

“OK, thanks,” said Mike.

Sean started to remove a screw from a panel on the machine. Mike noticed Sean wasn’t wearing gloves, safety glasses or a face shield.

That doesn’t seem very safe, he thought. Then Mike remembered the Supervisor’s advice: “Stay in your lane.”

Mike headed off for an early lunch and didn’t say anything.

Ghastly accident will haunt them

All right, let’s see what’s wrong with this sucker, Sean thought. He bent down to get a better look at the injection chamber.

He didn’t realize the plastic was still scalding hot and under pressure. A spray shot out and splashed his face.

“No!! No!!” Sean screamed.

Co-workers came running from every corner to find Sean writhing wildly on the floor with his hands covering his face.

Mike rushed in and nearly passed out at seeing the bright

crimson hue of the technician’s face.

No review of energy procedures

The technician suffered severe burns to his face.

OSHA’s accident investigation resulted in two willful violations for lack of annual and periodic inspections of energy control (lockout/tagout) procedures.

Even though the company provided PPE, it didn’t always enforce the rules to wear it, which led to serious citations for eye and face PPE, plus a lack of written LOTO guidelines.

OSHA fines added up to \$85,826.

The company’s workers’ comp insurance costs are sure to go up,

and it’s almost certain to pay out a very hefty sum to the severely burned employee.

Not the first time

This tragedy could’ve (and should’ve) been prevented. The company, North American Lighting in Paris, IL, was cited for similar LOTO violations in 2019.

Chances are safety-conscious folks spoke up the first time OSHA fined it, but the decision makers at the company didn’t take a thorough look at its procedures and make changes.

A near-miss, or an OSHA citation where no one got hurt, is a precious second chance any business needs to take advantage of – the price is too high not to.

Info: www.dol.gov/newsroom/releases/osha/osha20210420

TEST YOUR KNOWLEDGE

Watching out for danger: It’s everybody’s business

Even on your best days it’s impossible to be everywhere at once to make sure everybody’s safe when it’s time to go home.

Do your staffers know what’s expected of them when it comes to spotting workplace hazards? Have them answer *True* or *False* to the following questions to find out.

1. Every job has a unique safety program, so you don’t need to raise concerns unless a program is established in the workplace.
2. You should speak up if you see frayed wires or water around electrical equipment.
3. If you see a co-worker being unsafe, remind them about the safety rules.
4. If you have an idea to improve safety, try it out. Then share the results with your Supervisor.

ANSWERS

1. *False.* All safety concerns should be voiced right away to a Supervisor. It could prevent someone from getting injured. To ensure the issue gets addressed promptly, put that concern in writing too.
2. *True.* If you notice any of those hazards, or any other possible electrical problem, let your Supervisor know right away.
3. *True.* It’s important to do it in a positive way that lets your co-worker know you have their back. For instance, “You’ll want to wear a helmet here. Something could fall from that scaffold.” Another option is get a Supervisor to talk to them about it.
4. *False.* Coming up with ideas and suggestions to improve safety is good. Just consult with a Supervisor first before trying an improvement out on your own.

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.

Fines tacked on after roof collapse injures worker

What happened: An employee for a Trenton, NJ, contractor was seriously injured while repairing an apartment complex garage roof when it collapsed.

What people did: Contractor Osman Inestrosa was already on the hook for \$109,224 in OSHA fines after failing to provide safety protections at a different worksite. A month later, the roof collapse happened. Inspectors found Inestrosa failed to provide fall protection, hardhats and eye protection, and workers were using the wrong ladder type for the work being done.

Result: Combined violations from the two inspections add up to \$201,090 in fines.

Lack of machine guarding costs manufacturer \$558K

What happened: A bath and shower manufacturer was fined after an OSHA inspection found 19 safety violations.

What people did: Clarke Products of Waco, TX, failed to:

- guard machines at points of operation and ingoing nip points
- guard belts, pulleys, gears, shafts and other moving machine parts
- guard non-working portions of a bandsaw, and
- ensure employees on walking-working surfaces 4 feet or more above lower levels were protected

from falling.

Result: Proposed penalties total \$558,821.

Note: This expensive fine could've been avoided by reviewing OSHA's requirements for machine guarding at [osha.gov/machine-guarding](https://www.osha.gov/machine-guarding), and for fall protection at [osha.gov/fall-protection/evaluation](https://www.osha.gov/fall-protection/evaluation).

COVID outbreak after luncheon: \$12K fine

What happened: Following a luncheon in the company breakroom at Midwest Warehouse and Distribution System of Naperville, IL, one employee died from COVID-19 and 23 others tested positive for the virus. After conferring with local health officials, the facility closed.

What people did: An OSHA inspection found the employer failed to:

- follow its own in-house controls for potential coronavirus exposure
- take immediate steps to contain the outbreak, and
- take steps to identify, inform, isolate and quarantine potentially exposed employees.

Result: The General Duty Clause serious violation will cost \$12,288.

Note: Even though this was an activity not directly related to work, Supervisors can't let their guard down – especially when it comes to the pandemic. If something's happening on company property, workplace safety protocols still have to be applied.

SAFETY TRAINING TIPS

■ Near-misses: The perfect learning opportunity

The problem with many near-miss reports is that workers can't imagine an alternate reality in which things didn't break their way.

Near-misses are the perfect opportunity for education and scaring people straight.

Start your story like this: "Today a worker lost his finger at a plant like this one. He had removed the guard from a machine to clear a jam, didn't lock or tag it out and his hand slipped into the moving parts."

Once you have their attention, give the full story.

"Now that plant I was talking about was actually this one. And while in this case no one lost their finger, nothing more than chance prevented it from happening.

"Next time, the worker might not be so lucky."

Re-framing a near-miss emphasizes how easily it could've gone the other way.

■ Capture safety gaffes from your work site

Coming up with fresh and relevant topics for safety meetings can be a challenge.

To fill the gap, take cell phone videos or pics of safety gaffes you find in the workplace.

Examples can include:

- a worker standing on the top step of a ladder
- a piece of equipment that's not tagged out properly
- an extension cord laid across a walkway posing a trip hazard, or
- a wet or dirty floor that's not marked with a safety cone.

There may be other types of safety issues related to housekeeping or security that you can record at your site, or download off the Internet to spice up a meeting.

Saw slices open worker's hand: Did company violate federal machine guarding rules?

Employee didn't use attached guard, applied danger zone distance rule

OSHA compliance officer Al Bradley was curious about the status of his last on-site inspection at a meat processing facility, so he stopped by the office of regional director Frank Meltzer.

"Hi, Frank. What did you think of my Biro Meats report?" he asked.

"Looks like a willful violation to me," Frank replied. "Did you know we previously cited that place four times for lacerations or amputations involving a bandsaw?"

"Really? That many times?" Al asked.

Couldn't use traditional guard

Frank skimmed Al's inspection report. "The employee that hurt his hand this time didn't use the push guard attached to the bandsaw. The meat slipped and pulled his hand into the blade," Frank said.

He continued: "If they had at least provided a hand tool, this accident wouldn't have happened."

"The employee told me he thought he was OK because Biro had a four-inch rule for staying away from the operating point

of the saw," Al said.

"It obviously wasn't enough," Frank said. "Besides, there's a standard that says tools 'shall be such as to permit easy handling of material without the operator placing a hand in the danger zone'."

The agency issued a violation for failure to provide employees with proper tools to prevent contact with a machine's point of operation.

Result: An administrative law judge (ALJ) vacated the violation, ruling the standard OSHA accused the company of breaking is conditional, not mandatory. Breaking down the language of the standard, the ALJ said it doesn't state what tools are to be used and the agency incorrectly identified a machine guard as a tool in this case.

Key: Although this company may not be totally off the hook if OSHA decides to come back with a new violation of a related standard, this case shows citations can be overturned.

Based on Sec. of Labor v. H-E-B.

What you need to know:

In situations where it's not feasible to use a barrier guard, machine guarding by distance is one alternate type of guarding that can be used.

OSHA has a safety distance chart at bit.ly/distance512 to help you come up with rules that are in compliance.

Details you'll need to consider:

- machine stop time
- total system response time, and
- response time of any machine presence-sensing device.

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

EDITOR:
BRIAN BINGAMAN
MANAGING EDITOR:
FRED HOSIER
PRODUCTION EDITOR:
P.J. FRONZEO
EDITORIAL DIRECTOR:
CURT BROWN

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Sharpen Your Judgment – The Decision

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

OSHA claimed that the employee who was injured hadn't been trained to work on pipes safely.

The company agreed that the worker hadn't been trained, but said it was for good reason: He wasn't supposed to have been doing that work, and had even been instructed not to try it.

The worker disobeyed that order, the company argued.

And a judge agreed. While the company would've been required to train a worker

on the hazards if it was his job, in this case, the worker went against his Supervisor's direct orders.

Result: The fine was thrown out.

Analysis: Train on what not to do

Part of working safely is not only knowing what not to do.

It's important to train workers on how to do their work safely. But it's equally important to make sure they know when to step back and leave a job to someone who is more qualified to do it safely.

Based on Secretary of Labor v. Furmanite.