

July 1, 2021

Supervisor overrides worker's warning: Broken leg, OSHA fine

Facility didn't enforce its own safety policy

“All right fellas, we've got a full shipment in today!” bellowed Supervisor Terence Jones. “Truck's coming into the loading dock now.”

Staffer Tim Stapleton stopped what he was doing to grab his gloves. “A full load?” Tim asked.

“That's right. Full container of stone slabs today,” said Terence.

Tim let out a long sigh. His company, Shaffer Stone Slabs (SSS), unloaded bundles of stones that weighed up to four tons.

“Guess I won't be hitting the gym today,” said Tim. “This is going to be

enough of a workout!” Tim's co-workers nodded and laughed in agreement.

Working close to very heavy loads

At the loading dock, the forklift operator drove up to handle the first of six loads of stone labs to be unloaded.

“Everyone stand back,” said the forklift operator. He maneuvered the forks under the first bundle and pulled back in reverse out of the shipping container.

This worked fine for the first few bundles. But for the two in the rear of the

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Sharpen Your Judgment

Should forklift-crashing worker have been fired?

“Sam Carr is out of his mind,” Supervisor Beth Adair said. “Why in the world would he get unemployment benefits?”

“He says we had no right to fire him for those safety problems he had,” Safety Director Chris Taylor said, looking up from the lawsuit.

“No right?” Beth asked. “He had two forklift accidents in four months. And during the last one, he knocked a pallet onto Trish!”

Two accidents: Was it misconduct?

“Sam claims it wasn't misconduct on his part,” Chris said. “He says he made a few mistakes on the forklift, but it was never

his intention to hurt anyone.”

“How is that not misconduct? He didn't drive safely,” Beth said. “We couldn't keep him on the payroll when he kept blowing off the safety rules.”

“Well, he claims our safety policy says a worker must willfully break the safety rules – and those forklift accidents were mistakes,” Chris said. “He says we were in the wrong to fire him, and we should pay unemployment.”

“I'd like to see that hold up in court,” Beth said. “There's no way!”

Beth's company fought Sam's claim. Did it 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.

Supervisor ...

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container, SSS would tie a cable from the lift truck to the bundle and pull it out.

That required Tim or another employee to enter the container and hold the bundles steady as they were pulled out.

“All right, she’s ready to move,” Tim yelled to the forklift operator.

As he’d been trained to do, Tim put his hands along the side of the bundle to gauge how secure it was, and alert the forklift operator to stop if need be.

“Moving her out,” yelled the forklift driver.

Just then, Tim could feel the slab shift a bit.

“Hold up! Hold up!” Tim shouted. “I don’t think she’s good to move.”

Terence, the Supervisor, checked the bundle from a few feet away. “Nahhh, it’s fine,” said Terence.

“Keep pulling it out,” Terence told the forklift driver.

Turns out there was a bump in the steel floor of the container which shifted the bundle of stone slabs to one side.

“Stop! She’s moving!” Tim screamed as the heavy load pinned him to the wall.

Lucky not crushed to death

An ambulance rushed the injured worker to the hospital. He suffered a broken leg and missed several weeks from work. The police

reported the accident to OSHA.

The company had a safety guide for protecting workers from falling objects and crushing injuries, and trained workers on it.

Unfortunately its policies weren’t enforced every day. Making employees enter the shipping container while a forklift pulled four-ton loads put them in a dangerous fall shadow.

Result: OSHA issued a serious citation for exposing employees to “struck-by, caught-in-between and crushed-by hazards while within the fall shadow of approximately 7,000 pound bundles of stone slabs without protection of bracing or supports.”

The company appealed the \$5,304 fine but lost, leaving it more vulnerable to a costly workers’ compensation claim or lawsuit.

Safety rule book collected dust!

We’ve said it before: Implementing a thorough safety plan and training workers is just half the battle.

Your team has to put those policies into action every day, no exceptions, no excuses.

Key: Supervisors should always seek and welcome employees’ feedback when it comes to safety matters – and they need to listen when someone voices a concern.

Based on Secretary of Labor v. P.M.I. International Stone Importers.

What you need to know:

The company in this case now has workers stand at the front of the shipping container outside the fall shadow, and braces loads until they’re removed and safely secured between the truck’s forks.

Safety audits are key to safeguarding against struck-by, crushing and caught-in-between hazards before there’s an accident. You may want to involve staffers in safety audits to get practical insights.

TEST YOUR KNOWLEDGE

Preventing those sneaky repetitive stress injuries

Ergonomics isn’t just good posture for desk workers. Everyday repetitive tasks can lead to ergonomic injuries – also known as musculoskeletal disorders (MSDs) – in a variety of workplaces.

Do your staffers know what to do to avoid getting hurt? Have them answer *True* or *False* to the following questions to find out.

1. The most effective protection against MSDs is using proper PPE.
2. Rotating job duties and keeping equipment in good repair can prevent MSDs.
3. Sustaining an awkward posture during work may be uncomfortable, but it doesn’t have any long-term health effects.
4. Shaking out your hands or wrists, or rolling your shoulders are signs of an ergonomic injury.

ANSWERS

1. *False.* Although PPE helps protect against ergonomic injuries, it’s the least effective method. Before reaching for PPE:
 - use machines for heavy lifting
 - reposition materials to avoid straining, or
 - redesign tools so they can be used in neutral postures.
2. *True.* Rules, policies and procedures implemented by a supervisor are there to prevent injuries.
3. *False.* If you find a less awkward or more comfortable way to do a job, bring it to a supervisor’s attention.
4. *True.* These could be early indicators of an MSD. So is wearing a brace to make work less painful. It’s important to bring any injury concerns to a supervisor as soon as possible.

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.

Collapse at worksite kills 2: Contractors fined \$194K

What happened: Two companies doing work at a demolition site in Manchester, OH, were fined after a building collapsed unexpectedly, killing two workers.

What people did: A laborer cutting steel and a truck driver preparing to move scrap metal off the site died in the collapse. OSHA's inspection found the contractors:

- failed to monitor the site for safety hazards, such as weakened or deteriorated floors and walls, and loosened material
- allowed employees to continue working under hazardous conditions, without shoring, bracing or other means of steadying a structure, and
- failed to train employees on identifying potential hazards.

Result: Adamo Demolition of Detroit was fined \$181,724. SCM Engineering Demolition of Saint Clair, MI, was fined \$12,288.

Note: Proper planning and training by a Supervisor could've prevented this tragedy. See OSHA's fact sheet on demolition and cleanup at bit.ly/Demo513.

\$136K for multiple workplace hazards

What happened: Pharmaceutical company HPPE of Columbus, GA, was fined for safety violations at its chemical manufacturing facility.

What people did: Among the company's 23 violations were failure to:

- provide hazard communication training to employees working with chemicals
- implement a written confined space program
- provide emergency means for flushing eyes and body, and
- provide guarding/fall protection systems or training for employees working from elevated platforms and near open pits.

Result: Proposed fines add up to \$136,816.

Payback for mismanaged waste may hit \$500K

What happened: A Riverbank, CA, hazardous waste treatment, storage and disposal facility was sued by the California Department of Toxic Substances Control (DTSC).

What people did: DTSC inspectors found that Riverbank Oil Transfer mismanaged used oil, antifreeze and oily wastewater because it:

- improperly stored hazardous waste
- co-mingled hazardous waste
- moved railcars filled with used oil to areas without secondary containment
- had incomplete records, and
- exceeded authorized hazwaste storage volume.

Result: With a maximum fine of \$25,000 per day of noncompliance, Riverbank potentially faces a half-million dollars in fines.

SAFETY TRAINING TIPS

■ Maintenance & tool safety a winning combo

Hand tool safety and good old-fashioned facility maintenance go hand-in-hand.

Here's what we mean by that. One of the best ways to prevent people from using the nearest tool they can find – or leaving tools lying around where someone can trip on them – is to create one or multiple tool storage areas depending on the layout of your facility.

There's no gray area here. When tools aren't in use, they belong in their marked, designated spot in storage.

The same lesson goes for damaged or worn-out tools.

It's up to the first person who notices a loose hammer handle or a power tool with a frayed cord to red-flag it and dispose of it or put it in a recycling bin.

Don't leave any tools or ladders that aren't 100% safe in your facility.

Reason: That's an accident waiting to happen because someone's liable to use it!

■ Use tickets to improve safety inspections

One way to get workers to thoroughly inspect machines before use? Put a prize on the line.

Get a stack of tickets you'd use in a 50-50 drawing. Hide one ticket somewhere on or inside machines staffers are supposed to inspect.

Put the tickets somewhere staffers will find them during a thorough inspection.

When workers find the tickets, put their names on the back and collect them. Then hold a drawing each month for a prize.

It's a great way to encourage staffers to be thorough during safety inspections each shift.

Soon workers will be competing with each other to see who can collect the most tickets.

Teen worker falls to his death after misjudging jump: Could a Supervisor have prevented it?

Labor Department investigation lands employer in hot water

Supervisor Steve Strickland admired how quickly 16-year-old employee Elliot Hess was getting things done up on the roof.

He turned to a crew member standing nearby. "If I had another one of him, this job would've been completed yesterday," he said.

"Give me a break, Steve," the crew member replied.

"Elliot's a kid with no experience."

"Wait, what is he doing?" Steve said.

Deadly error

Elliot climbed over a barrier at the roof line and attempted to jump onto a power-driven hoist next to the building.

He missed the platform, slipped through a gap between the scaffolding and the building and fell to his death.

The fatality triggered investigations by the state and federal Department of Labor (DOL).

The employer was found in violation of child labor provisions of the Fair Labor

Standards Act banning employers from allowing workers under age 18 to perform hazardous activities like roofing.

The company also allegedly violated child labor laws by allowing Elliot to work more than eight hours a day and more than 40 hours per week when he was 15.

Result: DOL proposed a fine of more than \$100,000 under the Child Labor Enhanced Penalty Program. The feds have the power to assess maximum penalties of \$59,413 for each violation related to the death or serious injury of a worker under 18. In addition, OSHA issued a serious violation of general scaffolding requirements.

Key: If you're supervising youth workers, it's essential to know child labor restrictions. For example, according to the feds, it's illegal for a minor to operate or ride on a power-driven hoisting apparatus. The contractor in this case might not come out on the other side of this without paying a heavy price.

Dramatized for effect. Based on DOL violations against Stover and Sons Contractors. The company is appealing.

What you need to know:

Federal Department of Labor regs state:

- there are 17 non-agricultural Hazardous Occupations not allowed for anyone younger than 18 to work at, and
- there are limits on hours and industries and occupations in which 14- and 15-year-olds can legally work.

See bit.ly/childlabor513 for details and review the youth employment rules for your state.

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Sharpen Your Judgment – The Decision

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Believe it or not, Beth's company lost.

A judge ruled it had to pay Sam's unemployment benefits.

Sam said his two forklift accidents were just mistakes – not negligence.

Sam claimed the company was wrong to fire him for safety "misconduct."

The company fought back, arguing Sam had been written up twice for his forklift accidents.

It also pointed to the latest forklift incident, which resulted in one of Sam's co-workers getting hurt.

But the judge disagreed. The judge ruled that although Sam's forklift accidents were

bad, they didn't rise to a level of misconduct that meant he should be fired.

Lesson learned: Make rules crystal clear

It's hard to know when you can fire a worker for being a safety hazard.

Your best bet is to:

- Make rules clear. A simple "three safety strikes and you're out" rule can work.
- Discipline and re-train. When a worker makes a mistake, invest the time to make sure they understand the rules, and document it.

Based on Schlib v. Duke Manufacturing.