

August 2, 2021

Forklift driver hits stack, then rams into co-worker: Is it firm's fault?

Operator didn't get refresher training after earlier mishap

“**S**peed Racer! I hear you tried taking out a stack of our product on Friday!” said Supervisor Vince Williams.

“Yeah yeah, I’ve heard all the jokes,” said staffer Curtis Fleetwood. “Everyone’s been razzing me. I took the corner with the forklift too tight, that’s all.”

“That’s all? That’s part of being a good forklift driver, by not taking turns too tightly,” said Vince. “Luckily you hit a stationary object and not a co-worker.”

“OK,” Curtis sighed. “I’ll be more careful next time.”

“Let’s make sure of it,” said Vince.

“I’d rather not spend my time and yours on remedial forklift training. This is your official warning.”

Driver easily distracted?

Curtis loaded his forklift with boxes and drove down a wide aisle. He saw a friend of his and waved.

“Welcome back from vacation!” Curtis called out. He didn’t notice a co-worker coming across the path.

“Watch out!” people yelled. The forklift

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Sharpen Your Judgment

Were regs ignored – or just an honest mistake?

“**I** know I screwed up,” said Supervisor Meg White. “But a willful violation? OSHA’s going too far.”

“That may be,” Safety Director Chris Taylor said. “But walk me through what the inspector saw that day.”

Tried to get them out

“Two workers were inside a trench to take some quick measurements,” Meg said.

“They strayed further from the east end exit than we expected,” Meg went on. “I was about to have them get out when that inspector showed up.”

“They need to be within 25 feet of an exit, right?” Chris said. “How far away were they?”

“The east end exit was about 30 feet away,” Meg replied. “But here’s the thing: We sloped the edges of the west end so they could get out there too. That was 10 feet away.”

“OSHA said that the slope on the west end was too shallow,” Chris observed.

“I know, I found out later it was,” Meg said. “But that qualifies as a willful violation?”

“I didn’t ignore rules or knowingly send my people into danger – I never would!”

The company tried to get the OSHA fine reduced. 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.

Forklift ...

(continued from Page 1)

slammed into Allison Carter, a veteran warehouse picker. The vehicle pinned her against a stack.

Not an object this time

“Oh my gosh!” Curtis yelled, putting the forklift in reverse to release Allison.

“Are you OK?” Curtis jumped down from the forklift and attended to Allison along with a few other concerned employees.

“Ooohhh,” Alison moaned.

She couldn’t find the energy to speak and looked so pale her fellow employees thought she’d pass out.

Bruised and bleeding internally, Allison was rushed to the hospital for treatment of serious injuries.

‘Keep your eyes on the road ...’

Safety inspectors from OSHA investigated the accident. They issued two serious citations for:

- not ensuring the forklift operator kept a clear view of the path of travel, and
- lack of refresher training for the driver after a prior accident.

Those citations added up to just under \$28,000 total. But OSHA didn’t stop there.

OSHA: ‘Why didn’t you fix this?’

Before conducting the investigation, inspectors checked up on the company’s safety record and found prior penalties for a lack of

machine guarding and inadequate lockout/tagout (LOTO) procedures.

Going over the plant floor with a fine-toothed comb, inspectors documented shortcomings in machine guarding and LOTO.

Result: OSHA tacked on an additional \$150,000 in repeat safety fines.

Refresher training isn’t optional

This facility should prepare for a follow-up site visit from OSHA in the near future.

Key: Forklift regulations are clear: After a forklift accident or a near-miss, the operator must be given refresher training before being allowed to operate a vehicle again at work.

The time and effort that both the driver and a Supervisor must put in can help prevent a future incident.

The offender should recognize the seriousness of the matter. If a Supervisor suspects he/she doesn’t, the offender can be prohibited from driving again.

Remind workers of dangers

A typical forklift incident involving a pedestrian results in an average of 20 days away from work. Injuries can be painful and linger for years.

Forklifts weigh at least 4,000 pounds. About 75 people are killed annually in accidents. It can happen at any workplace that slips up on safety training.

What you need to know:

Like the old Doors tune goes, “Keep your eyes on the road and your hands upon the wheel!”

Operators should always stop when they need to have a conversation or do a task. They can also alert people in the area to the forklift by:

- honking the horn if necessary
- using the flashing light, and
- putting up caution tape, signs or cones to identify ongoing work in an aisle or tight space.

Info: dol.gov/sites/dolgov/files/OPA/newsreleases/2021/03/OSHA20210453.pdf

TEST YOUR KNOWLEDGE

Staying safe around deadly silica dust on the job site

Crystalline silica is quite common. It’s in substances like sand, concrete, brick, tile and granite.

Do your staffers know what to do to avoid the health risks of silica dust exposure? Have them answer *True* or *False* to the following questions to find out.

1. The most effective method for controlling silica dust is to use tools that keep materials dry.
2. Silica dust particles are visible, so if you don’t see any at a work site, there’s no danger of exposure.
3. Fans can be used to help limit your exposure to silica dust, but they shouldn’t be the only method used.
4. It’s important to be careful when changing vacuum bags because you can be exposed to dangerous levels of silica dust.

ANSWERS

1. *False.* Using water-spraying machines while cutting and drilling is best for preventing hazardous dust from being released. When cleaning an area where silica dust may be present, mist the area first but use the water sparingly.
2. *False.* There are also invisible silica dust particles that can be inhaled, leading to health problems like silicosis, pulmonary tuberculosis and even lung cancer.
3. *True.* If you’re using fans at a worksite, be sure there are other protections being used like vacuuming or N95 respirators.
4. *True.* It’s best to use bags that don’t expose workers to the bag contents when they’re being changed. It’s important to make sure the bags aren’t overfilled.

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.

Combustible dust explosion injures worker: \$215K

What happened: An explosion caused by the ignition of grain dust seriously injured an employee of MFA Enterprises' Adrian, MO, grain loading facility. The blast destroyed the building's main elevator.

What people did: MFA Enterprises failed to equip bucket elevators with monitoring devices that notify workers when a belt is slipping, potentially causing friction that could ignite grain dust. The devices are required for grain handling facilities that have storage capacity of over 1 million bushels. OSHA also issued violations related to:

- fall protection
- housekeeping
- failure to designate hazardous areas, and
- lack of preventive maintenance.

Result: The penalty is \$215,525.

Note: For safety guidance and standards related to combustible dust, visit bit.ly/dust515

Fatal fall from platform costs company \$164K

What happened: An employee at a plastic recycling facility fell more than six feet from an elevated platform and later died in the hospital from a head injury sustained in the fall.

What people did: While Scrap

Masters of Toccoa, GA, installed some fall protection on the platform, it failed to equip stairs and platforms with guardrails to prevent falls. In addition, the employer failed to:

- prevent workers from being exposed to noise levels above the allowable time-weighted average
- develop and utilize procedures for machine service and maintenance, exposing them to amputation hazards
- repair or provide a training program on powered industrial trucks, and
- mount and mark fire extinguishers, or implement a training program for using extinguishers.

Result: The 13 violations add up to \$164,308 in fines.

Owner with symptoms exposes workers to COVID

What happened: The owner of several Rhode Island medical facilities failed to protect workers from COVID-19 after he contracted the virus and allegedly infected six employees.

What people did: According to OSHA, the owner allegedly continued to interact with workers and didn't properly implement safeguards after he exhibited symptoms and later tested positive for the virus.

Result: A \$136,532 fine.

Note: Isolation for anyone with COVID symptoms, pending test results, is still crucial. Read up on OSHA's COVID-19 National Emphasis Program at bit.ly/covid515

SAFETY TRAINING TIPS

■ Training jitters? Here's why you shouldn't worry

Many Supervisors get nervous for upcoming training sessions. They worry about what could go wrong: looking too nervous, getting stumped by a question, losing their train of thought, and so on.

To combat nerves, remember this phrase: What does my audience really want?

Focusing on what matters most to employees – clear, actionable info – takes your delivery and potential mistakes out of the equation.

Remember: Workers don't attend training to see a perfectly rehearsed demonstration. They're there to get the information they need to do their jobs safely, and that's it!

■ Slip, trip & fall protection starts with boot checks

Keeping workers safe from slips, trips and falls can be as easy as making sure their footwear's up to the task.

At the next safety session, perform a footwear test. Here are some things to look for:

- **Visual tread checks.** Look at the bottom of the boot. Make sure the tread is still visible throughout the whole bottom of the shoe (and not worn in spots).
- **Bend testing.** Grab the underside of the toe and heel of the boot, then try to bend them toward each other. If the boot bends in the middle, it's too flexible and needs to be replaced.
- **Bump check.** Put your hand into the shoe and slowly slide it from heel to toe. Feel along the way for any bumps or worn out sections.
- **Standing tall.** Put the boots on a table or other level surface. Get on eye-level with the back heel and check that the heel rests flat on the surface.

Worker falls to his death, PPE was available: Is employer on the hook for OSHA penalty?

Normally safety-conscious employee was working distracted

It was getting to the end of the afternoon break, and carpenter Zack Calhoun was on his phone in a heated argument with someone.

“You OK, Zack?” asked Supervisor Doug Beecher.

“My stepdaughter’s giving me a hard time. Nothing I can’t handle,” he replied.

“Will you have all those holes on that second floor platform covered by the end of today?” Doug asked.

“No problem,” said Zack.

Doug never had to discipline Zack for not using fall protection equipment when required, so he decided not to remind him about the two safety harnesses up on the level he’d be working on.

Didn’t use provided equipment

Eager to get his mind off the upsetting phone call, Zack grabbed his hardhat, hurried past the harnesses and started covering platform holes with plywood.

As he was working, one of the cleats that held the plywood boards in position came loose. Zack slipped, fell through one

of the floor openings and let out a scream. There was a sickening crack as he hit the concrete ground floor.

Zack usually worked alone, so it took till the end-of-day site inspection to discover what happened. His injuries were fatal.

The OSHA inspector that showed up told company management he wouldn’t recommend a citation. However, the agency issued a serious fall protection violation.

The company contested it on the grounds it couldn’t have known about the conditions that led to the fatal fall.

Result: An administrative law judge agreed with the company and said its fall protection measures and equipment and supervision of the worksite were adequate.

Key: Even after going over fall protection in a safety meeting, Supervisors still need to keep an eye on employees working at heights to make sure they’re using the equipment correctly.

Based on Sec. of Labor v. Harvestland Constructors.

What you need to know:

OSHA’s requirements for walking/working surfaces fall protection include:

- using personal fall arrest or guardrail systems, or covers around holes 6 feet or more above a lower level
- using safety net, guardrail or personal fall arrest systems around unprotected/ leading edges 6 feet or more above a lower level, and
- testing that the strength and integrity of surfaces will support workers.

Sharpen Your Judgment – The Decision

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No, the case went before the Occupational Safety and Health Review Commission (OSHRC), which upheld the fine.

The company argued it had made a good faith effort to provide exits for employees at both ends of the trench.

It claimed it had just miscalculated how steep to slope the edges of the west end exit.

But OSHRC wasn’t forgiving. It said the Supervisor knew her people were too far away from the safe exit.

It said since the Supervisor was going to tell the employees to get out of the trench when they strayed too far from the east end exit, she must’ve realized that was the only safe one.

In the end, the willful violation stood, and the company was fined \$42,000.

Analysis: Know them front-to-back

When OSHA comes calling, not being sure of regulations won’t be an acceptable excuse.

Make sure to review safety requirements before every job.

It’s a good idea to always have a hard copy of the regs for quick reference too.

Remember: The only way to avoid fines is to be as much of an expert on OSHA’s rules as its own inspectors are.

Based on Secretary of Labor v. Kilby & Gannon.

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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