

September 14, 2021

## Facility v. OSHA: Did electrocuted worker need more coaching?

### *Supervisor's choice to lead job at heart of OSHA fine*

“Let’s review safety procedures before you two head up in the lifts,” said Supervisor Larry McArthur.

“Are we doing anything different today than yesterday?” asked Pete Boyer, an electrician with 20 years experience.

“Different day, same job!” laughed Marco Rivera, who was less experienced and younger than Pete, but serving as the lead on this project because of his veteran status at the company and his expertise with power lines.

“I see you’ve got your rubber sleeves and gloves on. Keep them on,” said Larry.

“Right,” both men said.

“When you remove the line, wrap the tails with protective blankets,” said Larry.

“Got it,” both men replied.

“And how far out is the minimum approach distance?” Larry asked.

“Five feet!” the pair bellowed.

“All right, get started,” said Larry.

### **Job went off-track**

Pete and Marco each worked to remove cut ends of a live power line. “Larry really

*(Please see Facility ... on Page 2)*

### *Sharpen Your Judgment*

## Firm disputes OSHA inspector’s take: Who wins?

“Thanks for coming to see me, Hector,” Safety Director Chris Taylor said. “I just got off the phone with the OSHA inspector and wanted to discuss his findings with you.”

“Calling him an ‘inspector’ is giving him too much credit,” Supervisor Hector Luna said. “More like a ‘guesser.’”

“What do you mean?” Chris asked.

### **Was inspector just lazy?**

“The OSHA guy shows up at a trench we’re digging,” Hector explains. “And he takes one look at it and says it’s 7 feet deep.”

“Well, how deep was it?” Chris asked.

“Less than five feet,” Hector said. “I know you need protections if it’s deeper than that.”

“What did the inspector’s measurements show?” Chris asked.

“That’s the thing: He didn’t take any,” Hector said. “He snapped a few photos from 20 feet away and said he could tell from those how deep it was.”

“That seems unlikely,” Chris agreed. “We should appeal these fines.”

The company argued the OSHA inspector hadn’t done enough to prove workers were in an unprotected trench more than 5 feet deep.

Did it get the fine overturned?

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.*

# Facility ...

(continued from Page 1)

worries about us, doesn't he?" Marco said to Pete.

"It's nice having a second wife at work," Pete chuckled.

"Ahh shoot," Marco mumbled to himself. "I cut the tail a little too long. Marco covered the tail with a rubber insulating hose instead of a blanket before preparing to hang the end of the wire on the cross arm of a job hoist.

"We're short on insulators so I'm taking the bucket down," Pete said.

As he lowered, Pete heard a loud thump above.

He saw Marco leaning from his bucket with a wrench in his hand and a buzzing sound.

Current shot through Marco's prone body.

"Bring him down!! Bring him down!!" Pete yelled to Larry.

Larry immediately used the ground controls to lower Marco's bucket.

Marco died minutes later.

## Supervisor's choice in question

"OSHA cited us for Marco's accident," said the company lawyer. "The inspector says we should've known Marco might put himself in danger and that he needed, I quote, 'a lot more coaching.'"

"That's ridiculous!" said Larry. "Marco was a skilled lineman. He passed all our safety classes with flying colors."

"Reading between the lines, the inspector thinks Pete should've

led the job because he's got more experience," said the lawyer.

"Pete's an excellent electrician too, but for this project, Marco was the clear-cut obvious choice to lead the job," said Larry.

"I reminded them that morning, use the insulating blankets to wrap the tails," said Larry. "I still can't believe Marco didn't listen."

## Facility fights OSHA citations

The company appealed the OSHA citations. First an Administrative Law Judge agreed with OSHA that the company was partially responsible for Marco's death.

### Result:

The company appealed to the Occupational Safety and Health Review Commission (OSHRC) – and won.

The OSHRC didn't agree with the inspector's

contention that the company should've anticipated the lineman not adhering to the minimum approach distance or using an insulating blanket according to the safety plan.

The OSHRC also agreed with the company that the lineman was properly trained and vetted.

**Key:** The company could show the employee's work record and completion of required safety courses. A thorough paper trail and safety oversight by the Supervisor kept the company's record clean.

### What you need to know:

When de-energizing isn't an option, using insulated tools and PPE and keeping a safe distance from hot wires is a must.

Supervisors in this tragic case did right by:

- going over safety basics every single morning
- checking workers had the tools and PPE they needed, and
- being nearby to lower the worker's bucket, though it was too late to save him.

Info: [www.oshrc.gov/assets/1/18/MasTec\\_15-1574\\_NM\\_Final.pdf?11484](http://www.oshrc.gov/assets/1/18/MasTec_15-1574_NM_Final.pdf?11484)

## TEST YOUR KNOWLEDGE

### Don't let a trench become an employee's grave

It only takes a split second for a trench to collapse – and cave-ins can be deadly.

Employees and contract workers need to know the facts before they step foot inside a trench.

To boost their knowledge, have them answer *True* or *False* to the following to test their knowledge on trenching safety. Then check correct answers below.

1. All equipment and dirt must be placed one foot away from the trench's edge to prevent collapse, per OSHA's regs.
2. Trenches five feet or deeper require a protection system, according to OSHA.
3. The type of soil you'll be working in doesn't really matter because the trench protection steps you'll need to take are always the same.

## ANSWERS

1. *False.* All equipment and dirt must be kept at least two feet away from the edge of the trench according to OSHA. Keeping equipment or dirt any closer than that distance can cause trench walls to cave in.
2. *True.* OSHA's regs state any excavations five feet or deeper require some sort of trenching protection, whether it's sloping, shoring or shielding.
3. *False.* There are three different types of soil with varying degrees of stability: Type A (most stable), Type B (medium stability), and Type C (least stable). Each of these types of soil requires a different degree of sloping, so all. It depends on the soil type.

### 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.*

## **22-year old apprentice never knew what hit him**

**What happened:** A 22-year-old apprentice for a construction contractor was part of a five-man team hired to repair a 50-ton hoist. While guiding a heavy steel cable onto a hoist drum, he was caught in a crane trolley's drive shaft and crushed to death.

**What people did:** Inspectors found the company, SPI/Mobile Pulley Works of Mobile, Alabama, didn't keep workers off the structure of a crane that was 30 feet off the ground and out of the path of moving parts. OSHA also cited the company for:

- exposing workers to caught-in and crushed-by hazards
- allowing employees to work near unguarded equipment
- not training on fall hazards
- failing to fit-test respirators, and
- not training workers on crystalline silica hazards.

**Result:** SPI faces a wrongful death lawsuit from the young man's surviving family. It's also out \$89,141 in OSHA penalties.

## **Missing machine guards result in amputated fingers**

**What happened:** A worker reached his hand inside a 500-ton hydraulic press which was in operation. The machine sliced off two of his fingers.

**What people did:** Workers at

D&D Manufacturing in El Paso, Texas, were allowed to work on machines that had safety guards removed. The company also failed to:

- conduct periodic inspections, which resulted in machines malfunctioning, and
- ensure workers wore required eye, face and hearing PPE.

**Result:** The two willful and 12 serious citations added up to a \$412,750 fine.

## **Fall fines keep piling up for repeat offender! \$136K**

**What happened:** JHM Roofing, a contractor in Millersville, Ohio, just flunked another safety inspection by OSHA! JHM habitually permits employees to work at heights without fall arrest systems at heights well above the 6-foot trigger.

**What people did:** Earlier this year, OSHA inspectors observed roofers working up to 24 feet off the ground without being tied off to an anchor or protected by alternative, suitable protection. OSHA issued two repeat, two willful and two serious citations against the company and its owner, Jonas Hershberger.

**Result:** This sixth write-up will cost Hershberger \$136,453. Another roofing company he owns was hit with a six-figure fine recently.

**Impact:** Bureau of Labor Statistics data for 2019 finds that 1,061 construction workers died on the job, 401 of them in falls from elevation. Fall protection in construction is, year after year, the No. 1 most commonly cited OSHA standard.

## SAFETY TRAINING TIPS

### ■ OSHA recommends masks for vaccinated workers

Preliminary evidence that fully vaccinated people can spread the Delta variant has prompted new workplace guidance from OSHA.

OSHA now recommends fully vaccinated workers in areas of substantial or high community transmission wear masks to protect unvaccinated workers and to reduce their risk of becoming infected themselves.

You can find whether the county where you're located is an area of substantial or high transmission on the Centers for Disease Control and Prevention's COVID webpage at: [covid.cdc.gov/covid-data-tracker/#county-view](https://www.cdc.gov/covid-data-tracker/#county-view)

### Steps you may need to take

In manufacturing facilities, meat processing plants and assembly line operations (including in agriculture), employers should:

- Ensure adequate ventilation, or if feasible, move work outdoors.
- Put space between workers, ideally at least 6 feet apart, and ensure people aren't working directly across from one another.
- Barriers aren't a replacement for face coverings and physical distancing – at least 6 feet of separation should be maintained between unvaccinated and otherwise at-risk individuals whenever possible.
- Stagger workers' arrival and departure times, as well as break times, to avoid groups of unvaccinated or otherwise at-risk workers in parking areas, locker rooms, and near time clocks.
- Provide visual cues (e.g., floor markings, signs) as a reminder to maintain physical distance.

For more info, go to our website and search for "OSHA COVID guidance."

**Info:** [osha.gov/coronavirus/safework](https://www.osha.gov/coronavirus/safework)

# Rushing to complete a job leads to near-fatal fall: Jury awards injured worker \$5.5 million

*Severely injured worker and wife sue employer*

Supervisor Gary Murray stepped out from the trailer and saw dark clouds begin to roll in.

“All right, guys. Weather’s coming in,” he yelled. “Let’s get everything secured and call it a day.”

“Supposed to be a bad one,” said Jim Crocker, as he walked by. “I’m not looking forward to driving home in this rain.”

“Plus we’re supposed to get pretty big wind gusts.”

“Yeah. I heard that weather report too,” Gary said.

“Should we throw the tarps on?” Jim asked. The company would use heavy tarps to cover equipment during particularly bad weather.

“Probably a good idea,” Gary said. “But hurry up. I don’t want you up there when the storm hits. Could be hitting any minute now.”

“I’ll be quick,” Jim replied.

He grabbed a heavy tarp and started to climb on top of the parked equipment. Jim could feel the first few raindrops hit him.

As Jim hoisted himself onto the cab

of the crane, he struggled to drag the tarp up with him.

Giving one big tug he managed to pull the tarp up. But he lost his grip.

Gary’s stomach turned as he saw Jim fall 15 feet. His head slammed into the concrete, shattering his helmet.

## Big verdict against employer

Jim survived the fall – but only barely. He suffered face and skull fractures and will be unable to work or care for himself again.

He and his wife sued the employer. They faulted the company for not providing fall protection for the job or safer means for putting tarps on elevated equipment.

**Result:** A jury awarded the injured worker \$5.5 million.

**Key:** Supervisors can’t be caught off guard. They need to have safe means for workers to do any job, no matter how little time there is to prepare for it.

*Based on Robinson v. West Star.*

## What you need to know:

There’s no excuse for not having safety equipment ready for a job.

Make sure you:

- Tell workers where they can find the safety equipment they need.
- Have them practice with devices so they’re comfortable using them before they need to, and
- Leave plenty of time for each job to be completed. Workers shouldn’t have to rush and work unsafely to meet deadlines.

## Sharpen Your Judgment – The Decision

*(continued from Page 1)*

Yes. The appeal went before the Occupational Safety and Health Review Commission (OSHRC), which ruled in the company’s favor.

The inspector relied on his best guess to determine the depth of the trench. He claimed he had enough experience to judge trench depths without a measurement.

The company countered this wasn’t good enough. It wanted OSHA to show it actually violated standards.

The judge sided with the company and overturned the fine.

It wasn’t enough for the inspector to claim the company violated the rules without

concrete evidence to back up his findings.

**Result:** The fine was overturned.

## Analysis: Prepare for inspections

Too many companies are caught off-guard when OSHA shows up and they don’t know what their rights are.

Have someone accompany inspectors to answer questions and take measurements and photographs of their own.

Try rehearsing what to do during OSHA inspections with your people so everyone knows their responsibilities and rights.

*Based on Secretary of Labor v. Straight Ahead.*

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