

January 17, 2022

## Worker warned to avoid slippery walkway: Can she sue after fall?

### *Company hauled in to court over slip-and-fall*

“Thanks for coming in early and helping me out with all of this shoveling and salting,” said Jeff Morris, the operations manager.

“Of course!” said staff member Sharon Murphy. “If we could close down, we would, but we can’t.

“I’m guessing some of our customers will stay home but you know a few of them will brave the storm,” she said.

“You know it,” said Jeff.

The pair unloaded a snow thrower from the service shed. They also pulled out bags of salt and shovels.

“Let’s hit the high-traffic areas first,”

said Jeff. “I’ll start on the parking lot.”

“And I’ll work on the main entrance and sidewalks,” said Sharon.

### **Conditions make for tough work**

About 45 minutes later ...

“How are you coming along?” Jeff asked Sharon.

“I wish it would stop snowing!” Sharon said. “Good news is, the ice is cleared.”

Both noticed a car pull into the parking lot. Employee Marge Sherwood typically came in early and even snowy conditions

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

### *Sharpen Your Judgment*

## Company fights OSHA lockout/tagout fine

“Let’s talk about this fine,” said Safety Director Chris Taylor. “OSHA says you didn’t have lockout/tagout procedures for changing out blades. That can’t be right.”

“We certainly do have lockout procedures,” replied Supervisor Jason Miller. “And you better believe my people follow them.”

### **Didn’t write procedures down**

“But it says here that you couldn’t produce a written copy of them,” Chris said.

“That’s true,” Jason responded. “But that’s because my team doesn’t need them written down. I do interactive training for lockout/

tagout rather than written.”

“Describe the training for me,” said Chris.

“I demonstrate how to lock out the hand tools. I show them how to do it, and explain they should put the key in their pants pocket until they’re done changing the blade,” Jason replied. “It’s a fool-proof way to prevent accidental startup, and it sticks in their minds.

“Writing it down would be a waste of time and paper,” Jason said. “Nobody would have time to look at it on the field. And these guys aren’t exactly readers, anyway.”

The company fought the fine.

Was it dismissed?

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.*

# Warned ...

(continued from Page 1)

didn't prevent her from being first-in today!

"Can you believe we're opening the office?" Marge complained, climbing out of her car.

## Employee wants it her way

"Watch your step," said Jeff.

"Yeah yeah," said Marge.

"Do me a favor and use the main entrance," said Jeff. "We just finished treating the walkway."

"You know I like to use the door outside Accounting," said Marge.

"My desk is right outside the door –"

"I understand you'd rather use the staff sidewalk and door," Jeff interrupted.

"But Sharon and I didn't get a chance to clean it yet.

"OK Marge?" Jeff asked.

"Fine," she harrumphed.

Jeff and Sharon huddled together. "We should take care of the side entrance and walkway, don't you think?" said Sharon.

"I'm still not done with the parking lot," said Jeff. "People will avoid walking where there's still four inches of snow, I think!"

"We really need to make sure people don't slip and fall getting out of their cars," said Jeff.

About an hour later, Jeff and Sharon headed inside for a hot cup of coffee and a break.

"That Marge is a trip, isn't she?" Jeff laughed.

"I hope she has enough sense to use the main door," said Sharon.

## Worker doesn't heed warning

Just then, Marge realized she left her purse in the car. Opening the Accounting door, she fumed to see snow covering the sidewalk.

Marge decided she'd trudge through the snow anyway to reach her car.

She slipped on a patch of ice and took a tumble.

From the break room window, Jeff saw Marge on the sidewalk, arms waving for help.

"I don't believe it," said Jeff.

**Result:** Marge sued, claiming negligence by the company.

In court, she admitted the Supervisor instructed her to use the main walkway entrance, but that no one

explicitly told her not to use the path that she preferred.

Her argument didn't sway the court. The snow-covered sidewalk was an open and obvious hazard that Marge – like anyone else – had a duty to avoid.

Case dismissed.

**Key:** This company made a good-faith effort to provide a safe walkway and parking lot for employees and customers in the middle of a snowstorm.

The employee chose not to take the safe path, so it's on her.

### What you need to know:

You can't always count on people to exercise common sense. To prevent an accident and reduce liability in a similar situation:

- warn employees/customers in writing about an "open and obvious" hazard
- put up caution cones or warning tape to make it clear people should stay out of an area, and
- finish the cleanup ASAP.

*Based on Gutierrez v. Hannawa Holdings, Genesee, et al.*

## TEST YOUR KNOWLEDGE

### Slips, trips & falls: Do workers know the facts?

Whether you're working in an office, on a manufacturing line or in a hospital, slips, trips and falls are a hassle no Supervisor wants to deal with.

So how can you make sure staffers know how to avoid slips, trips and falls? Have them answer *True* or *False* to the following questions:

1. Comfortable, worn-in shoes make it easier to walk and less likely that you'll slip and fall.
2. When climbing a ladder, you should grasp the rungs as you climb to keep your balance.
3. Carrying a little too much is OK, as long as you walk slowly.
4. Same-level falls occur more often than elevated-level falls, and are more likely to result in serious injury or death.

## ANSWERS

1. *False.* Worn-in shoes might be comfortable, but they often create less friction on the floor, which can lead to a fall. It's a good idea to double-check the soles of your shoes to make sure they're in good condition every few months.
2. *False.* You should grasp the side rails of the ladder, not the rungs, to keep your balance and prevent a fall.
3. *False.* Carrying too many things at once can make it harder to keep your balance while walking, no matter how slowly you move. Best bet: Carry smaller loads and make more trips.
4. *False.* Same-level falls happen more often, but aren't usually fatal. Elevated falls occur from a ladder, platform or other height. These happen less often than same-level falls, but the injuries are usually more severe.

### 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.*

## **Ergonomics fine a warning to other busy facilities**

**What happened:** It doesn't matter that OSHA doesn't have an ergonomics standard – the agency can still fine you under the General Duty Clause (GDC) in egregious cases.

**What people did:** OSHA conducted a six-month review of the Seaboard Foods facility in Guymon, Oklahoma, and had to fine the pork processor for something. Which it did, of course – a serious health violation of the GDC for “exposing workers to ergonomic hazards associated with repetitive motion and lifting.” OSHA noted employees regularly lift boxes weighing between 50 to 90 pounds from a conveyor to pallets.

**Result:** The OSHA fine is \$27,306. Seaboard could appeal to the Occupational Safety and Health Review Commission, a common reaction by companies that are fined under the GDC, to keep their safety records clean.

**Lesson:** Providing lifting devices and training on ergonomic practices can help prevent injuries and OSHA fines.

## **Coronavirus safety plan doesn't cut the mustard**

**What happened:** Healthcare offices and hospitals aren't the only sector that needs to focus on COVID protocols – facilities in

the food industry are also under OSHA's microscope.

**What people did:** Johnnie McDade Grocery in Milledgeville, Georgia, failed to:

- develop social distancing measures to mitigate the spread of coronavirus, and
- ensure a meat cutter band saw was properly guarded to prevent amputation injuries.

**Result:** The grocery store got unwanted publicity and a \$9,362 fine for its safety violations.

## **No fall arrest system: Worker plunges to death**

**What happened:** A construction worker fell 60 feet to his death from a roof during demolition of a building in Brooklyn. The culprit? Lack of adequate fall protection equipment.

**What people did:** Richmond Construction, of Jamaica, Queens, New York, is in hot water following a fatal accident of one of its employees. OSHA hit the contractor with a repeat citation for not routinely inspecting its job sites, and with willful citations for failure to:

- protect employees on working surfaces 6 feet or more above lower levels with unprotected sides by using guardrails, safety nets or personal fall arrest systems, and
- provide employees with training on fall hazards.

**Result:** Serious fines were also issued for a lack of hearing and eye PPE.

**Lesson:** The contractor's out \$374,603 in fines with a lawsuit on the way.

## SAFETY TRAINING TIPS

### ■ 3 questions employees need to ask themselves

One way to make sure workers are following safety steps even when you're not around:

Train your crew to ask themselves safety questions.

Here are three examples you can have them start with:

1. Am I putting myself or my co-workers at risk right now? (the answer should always be no!)
2. What would everyone else here say about my actions? (nothing negative, you'd hope.)
3. Would I be proud of myself if the rest of the crew knew I was doing the job this way? (the answer should always be yes.)

If staffers are asking themselves these questions, they'll be less likely to take the safety shortcuts that lead to injuries, near-misses or safety fines.

### ■ Have a need for speed? Don't bring it to forklifts

Warehouses, loading docks and manufacturing plants are busy places where forklift operators typically have to work against tight deadlines.

But being busy is no excuse to drive a forklift at excessive speeds.

Driving a forklift too fast can lead to hazards such as product falling off carried pallets, pedestrians getting struck and can lead to the forklift running off the edge of a dock or tipping over.

All of these incidents can result in operator or pedestrian injury and even death.

The easy way to mitigate such hazards? OSHA suggests driving forklifts slowly, especially on docks or dock plates leading into a trailer.

# Are you talking with employees or talking at them? How we flipped the safety script

*Discussions ensure real learning*

We had an incident in which an employee got his hand stuck in a piece of equipment and was seriously injured.

As a result, we developed a process on how to use equipment properly.

So we went through every job safety analysis for every piece of equipment.

We moved this method into our construction work, and listed the tasks of the day and the hazards associated with them.

Supervisors were supposed to lead a talk based on that list before work started each day: a task hazard analysis (THA).

But we ran into a problem.

## No interaction, no interest

The supervisor would read the THA aloud with everyone else just standing there. There was no sign of interaction or interest in the topic.

The problem was, we were talking at people, not talking with them.

If this activity took ten minutes at the start of each workday, we calculated

the time spent amounted to more than \$240,000 a year.

## Real conversations

Solution: The Supervisor now asks employees on the team to talk about some hazards they faced with that day's job.

Each employee mentions a couple of hazards and what they'd be doing to mitigate them.

The Supervisor listens to them instead of talking at them.

## Extra benefits

With our new THA process, workers with more experience lead the way in discussions, and less-experienced staff learn that this is the norm for us.

We prepare younger workers to feel comfortable talking in front of their peers. Now we have a workforce that's more engaged in safety, and Supervisor leadership skills improved in the process.

*(Based on a presentation by David Murphy, VP Safety, Pepper Construction of Indiana, Indianapolis, at ASSP's Safety21 Conference.)*

## What you need to know:

This company learned it was "going through the motions" by just having someone read the hazards aloud and then having workers sign off that they heard. It led to a "cheapening of the safety culture."

There may be times when training workshops and toolbox talks at your facility seem that way. You're much better off looking at ways to shake things up and change the mood to use people's time wisely and teach (or review) something worth knowing.

## Sharpen Your Judgment – The Decision

*(continued from Page 1)*

No. The Occupational Safety and Health Review Commission (OSHRC) listened to the appeal and determined that the company violated the terms of the cited standard.

The company admitted it didn't have a written lockout/tagout document. It argued it trained employees verbally and having a written copy wasn't necessary.

OSHA argued the written lockout/tagout plan was required, regardless whether workers used it or not.

OSHRC sided with OSHA. It said the company exposed workers to the hazards of unexpected energization or startup by not having plans in writing.

Therefore the fine stood and the company had to pay.

## Analysis: Follow every step

Even if an OSHA rule doesn't seem to make sense for your workplace, that doesn't make it optional.

You have some leeway in how you train employees. But the safety program still needs to check off all of OSHA's boxes too.

At least one person on staff may benefit from the written rules. Plus, it provides a record of your rules if you need it in court.

*Based on Secretary of Labor v. Peacock.*

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

MANAGING EDITOR:  
FRED HOSIER

PRODUCTION EDITOR:  
P.J. FRONZEO

EDITORIAL DIRECTOR:  
CURT BROWN

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