

February 1, 2022

Worker on light-duty fired for ... bending over? Court decides case

Was worker goldbricking or did company want to fire him?

“**H**as anyone seen Geoffrey?” yelled Maryanne the Safety Supervisor. “The phone’s been ringing off the hook!”

We’re trying to fill orders, and once again, Geoffrey’s not doing his job, Maryanne thought to herself.

“Here I am,” said Geoffrey. He limped back to the dispatch desk. “Sorry about that, but the old back was flaring up.

“I needed to stretch it out,” said Geoffrey. “Surgery’s coming up soon.”

“I’m aware of that,” said Maryanne. “Just like you’re aware of the rules: If you can’t man the phones, you need to get someone to relieve you.

“I’m putting a written warning in your file for this,” said Maryanne.

“Of all the petty B.S.!” said Geoffrey.

Maryanne lowered her voice in case anyone nearby was listening. “If you’d like to sit down with HR and talk about it, I’m available right now,” said Maryanne.

“Let’s do that,” said Geoffrey.

Injured worker on thin ice

“A key requirement of the dispatch desk is being at the phone,” said the company’s HR director. “I know Maryanne explained

(Please see Fired ... on Page 2)

Sharpen Your Judgment

Worker disobeyed order: Will OSHA fine stand?

“**S**am, thanks for coming so quickly,” said Chris Taylor, the Safety Director.

“I came as soon as I heard it was about Doug’s accident,” Supervisor Sam Kittain said. “Is OSHA going to fine us after all?”

“I’m afraid so,” Chris said. “OSHA says we didn’t provide Doug PPE that could protect him from arc flashes.”

Tried to ‘work hot’

“First of all, we did give him PPE,” Sam objected. “He just didn’t wear it.

“And he wouldn’t have even needed to wear PPE if he had called the power company

to get the power shut off like I told him to.”

“Doug says he does work ‘hot’ – with the power on – all the time,” Chris said. “And he said he informed you he’d be doing it.”

“He told me he might do the job hot,” Sam said. “I told him there was absolutely no reason to. I told him to call the power company and have the line shut off.

“I didn’t find out he had done the work hot until I got the call he’d been burned in an arc flash,” Sam said. “He just never made the call.”

The company argued Doug broke the rules without anyone knowing about it, and the fines should be 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.

Fired ...

(continued from Page 1)

that when we came up with this light-duty assignment for you because I heard her.”

“You make it sound like putting me on light duty is some sort of privilege,” Geoffrey replied. “I’d much rather be turning a wrench than sitting at a desk, but I injured my back.

“And I injured it working hard for this company for 10 years,” said Geoffrey.

“We’ve accommodated your injury,” said the HR chief “The workers’ comp claim is still pending, but we’ve kept you on the job.”

“Let’s review the facts,” said Maryanne. “You were caught sleeping in the warehouse six months ago and I gave you a verbal warning for that.

“Now today you leave a busy work area without giving me a heads up,” said Maryanne.

“So it’s two strikes, and one more I’m out? Is that what you’re saying?” Geoffrey yelled.

“That’s entirely up to you,” said Maryanne. “We’ve got rules and expect people to follow them.”

“Fine,” said Geoffrey. The meeting ended on a tense note.

Was communication blurred?

Geoffrey underwent surgery on his back and returned to work. He continued doing light-duty work per his doctor’s orders.

Geoffrey signed an agreement with his employer stating he wouldn’t veer from the doctor’s recommendations – no bending over, lifting boxes, working with tools, and so on.

In exchange, the company would pay partial disability benefits plus Geoffrey’s wages.

A few weeks later ...

Maryanne the Supervisor walked into the lunchroom and her jaw dropped. There was Geoffrey down on one knee, using a stick to reach under a vending machine.

“I dropped my quarters and they rolled under there!” Geoffrey laughed. “Can you believe it?”

“I actually can’t believe what I’m seeing,” said Maryanne. “Can you please stand up carefully?”

“What’s wrong with you?” Geoffrey asked, turning pale. “We can talk about it with HR,” said Maryanne.

Result: The company fired Geoffrey for kneeling down, which was prohibited in the agreement he’d signed.

An administrative law judge ruled Geoffrey was entitled to disability payments up until he was fired for cause, but no further.

The case went through some twists and turns after Geoffrey appealed, but the company won in the end.

Based on Oliver v. National Beef Packing.

What you need to know:

Was the injured employee milking an injury to collect disability? Or was the company looking for any reason to fire him? Tough to say!

What’s not in doubt is the Supervisor’s attention to detail and consistent discipline made all the difference in court.

It’s crucial to mete out discipline fairly, never play favorites, and explain to workers what’s expected of them.

TEST YOUR KNOWLEDGE

Safety Quiz: How do you prevent a back injury?

Back injuries are devastating for workers and their employers. Not only can they limit everyday activities, they frequently result in lost time, which costs companies money and slows production.

It’s in everyone’s best interest to prevent back injuries. See how much your people know by answering *True* or *False* to the following.

1. It’s better for your back to push a heavy object than to pull it.
2. Most back injuries are caused by a single attempt to lift something that’s too heavy.
3. Men and women suffer back injuries at about the same rate.
4. Sitting for prolonged periods is bad for your back.
5. Try to lift and carry objects as quickly as possible to avoid straining your back for too long.

ANSWERS

1. *True:* Pushing a heavy object is generally better than pulling. Pushing uses mostly leg muscles, rather than pulling, which primarily uses back muscles. Asking for help when needed is always best.
2. *False:* Back injuries are most commonly caused by repetitive stress over time. That’s why it’s important to use safe lifting techniques every time and ask for help, or use mechanical aids for lifting heavy loads.
3. *False:* Men are almost twice as likely to suffer back injuries that require time away from work.
4. *True:* Sitting increases pressure on the back by up to 300%. Stand up every half hour or so to stretch out the back muscles.
5. *False:* Take it slow when lifting heavy objects. Allow for recovery time between lifts too.

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.

Missed the mark badly on safety requirements: \$276K

What happened: A Syracuse, New York iron foundry let a lack of basic safety precautions slide for far too long.

What people did: Frazer & Jones got written up for 60 violations adding up to \$276,000 in fines. The foundry failed to:

- protect employees from crystalline silica, silica dust and combustible dust
- correct fall, struck-by and caught-between hazards, including unsafe work floors and walking surfaces
- implement confined space safeguards
- provide fire extinguishers
- keep an exit route clear, and
- prevent the build-up of bird feces on equipment.

OSHA flags dangerous trench before anyone hurt

What happened: The sidewalls of an unprotected trench can collapse without warning and crush workers fatally. It's up to employers to make sure soil isn't piled too close to the edge of a trench.

What people did: OSHA caught employees of two contractors – Reyes Landscaping and TRD Contracting – in Greenville, Rhode Island, working in a 5-to-8 foot deep trench without cave-in protection. The employers

allowed soil removed from the trench to be piled at the trench's edge, causing some materials to fall back into the trench where the workers were installing sewer pipes. In addition, these hazards were cited by OSHA:

- a competent person didn't inspect the trench before work started
- employees lacked helmets to protect against falling objects
- an inadequate ladder to enter and exit the trench was in place, and
- an uninspected and unlabeled steel alloy chain sling was being used to lift objects.

Result: Both contractors are on the hook for a \$75,000 fine.

Oil & chemical releases endangered workers

What happened: Visible oil and vapor releases into the air, plus fiery flares, prompted an OSHA inspection at this refinery.

What people did: Limetree Bay Refining, an oil refinery in Saint Croix, Virgin Islands, violated the process safety management standard by failing to:

- compile all necessary information on equipment and technology, including relief system design and safe operating limits
- implement hazard controls
- complete a pre-startup safety review, and
- inspect equipment before starting it up and introducing hazardous chemicals to the process.

Result: OSHA didn't pull any punches – it fined the refinery \$259,000.

SAFETY TRAINING TIPS

■ OSHA COVID-19 policy is back on track again

OSHA's COVID-19 emergency temporary standard (ETS) for businesses with 100 or more employees is back in effect after the 6th Circuit Court of Appeals lifted an earlier injunction.

The Supreme Court was scheduled to hear challenges brought by multiple states in a special session on January 7. We'll keep you posted.

The GOP minority in Congress may try stopping the ETS as Democrat Joe Manchin (West Virginia) says he opposes a COVID-19 mandate on private employers.

OSHA can now enforce the ETS but says it won't issue fines for noncompliance before January 10.

Info: Go to our website and search for "OSHA COVID emergency standard" for more on the rule.

■ What to do in case of an amputation injury

It's any Supervisor's worst nightmare: A worker suffers an amputation injury on the job.

But it's something all Supervisors should be prepared for. How should you handle it if it happens?

If a worker's finger is cut off, for example, put pressure on the wound.

Then find and gently wash off the finger to reduce the amount of bacteria.

Get a clean cloth or piece of sterile gauze, dampen it with cold water and wrap the finger in it.

Put the wrapped finger into a plastic bag and put the bag in cold water.

That'll help preserve the finger until help arrives – and make it more likely medical experts can reattach it.

Case study: If your company achieved safety excellence, what would it look like?

Clients were so impressed, they signed on for longer projects with us

To reach excellence in safety, first you have to define what it will look like.

Safety success has to be defined not only in results but in performance terms. It has to be defined in ways that are observable.

This is the way one company I worked with defined safety success:

If the bosses are interested ...

This was a construction company with about 80% attrition each year because, after finishing one major project they'd been working on for nine months, they'd pack up and move to another location and another project. So getting employees on the same page was very difficult when they lost most of their people every year.

Leadership decided to define safety success as good job planning and preparation for daily tasks.

Their goal: A company manager could walk up to any worker, and that person would know their job and their safety role and responsibilities tied to it.

People pay attention to what bosses pay attention to, particularly when the boss

describes "this is what we want" and talks to employees.

What does safety look like?

The company also asked, what should safety look like to employees who are going to be with us for only nine months?

The company boiled it down to four main things they wanted employees to do:

- always wear the correct PPE
- focus your eyes in the direction that you're traveling
- keep out of the path of rotating or moving equipment, and
- pay attention to what you're standing, walking or climbing on.

Any employee who was on the job for a month knew these four things because they were emphasized over and over again.

One client was so impressed that they awarded the construction company an extension of their project.

(Based on a presentation by Shawn Galloway, CEO, ProAct Safety, Houston, at the National Safety Council's 2021 Safety Congress)

What you need to know:

Nothing impresses workers about a company's dedication to safety more than seeing the owner, executives and Supervisors out in the work areas.

Employees who can get regular face time with company leaders are more likely to:

- speak up about safety concerns, as well as share positive steps in the course of their work days, and
- speak positively about the company, which helps improve morale and retention.

Sharpen Your Judgment – The Decision

(continued from Page 1)

Yes. The company took its appeal to the Occupational Safety and Health Review Commission (OSHRC), which threw out the OSHA fine.

OSHA argued the company hadn't provided PPE that could've protected its worker in an arc flash.

The company countered that it did provide the PPE, but it wouldn't have been needed if the worker followed its rules.

If he had called the power company to get the electricity shut off, there wouldn't have been any danger at all.

OSHRC agreed. It said the Supervisor made it clear that the power should've been off.

Because the company didn't know its worker had violated its rules, it shouldn't be fined, OSHRC said.

Analysis: Make rules crystal clear

After being told the safest way to do the job several times, this worker still broke the rules. Even more alarming: He announced his intention to do so ahead of time.

If you even suspect a worker might ignore your safety steps, get that idea out of his or her head right away.

Explain safety procedures should be followed to the letter every single time.

Based on Sec. of Labor v. Stewart Electric.

EDITOR-IN-CHIEF:
SCOTT BALL
sbball@safetynewsalert.com
MANAGING EDITOR:
MERRIELL MOYER
PRODUCTION EDITOR:
P.J. FRONZEO
EDITORIAL DIRECTOR:
CURT BROWN

Supervisors Safety Bulletin (ISSN 1528-9834), issue date February 1, 2022, Vol. 22 No. 527, is published semi-monthly (24 times a year).

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting or other professional services. If legal or other expert assistance is required, the services of a competent professional should be sought. — From a declaration of principles jointly adopted by a committee of the American Bar Association and a committee of publishers.

Copyright © 2022 Safety | News Alert. Please respect our copyright: Reproduction of this material is prohibited without prior permission. All rights reserved in all countries.